

THE TRAVANCORE EZHAVA BILL.

Clause 15.

DEPUTY PRESIDENT: Mr. Kumaran.

MR. N. KUMARAN: Before proceeding to move my amendment, I should invite the attention of the President to another amendment of mine—amendment 10 in the agenda paper. That was not moved when clause 4 was discussed, and, with the permission of the President, it has been reserved for discussion when clause 15 and the subsequent clauses are taken up for discussion.

DEPUTY PRESIDENT: Well, I permit you to discuss that now.

MR. V. SUBBA AIYAR: That will be necessary only if his amendments are accepted. The definition would be necessary only in that case. It is only if the expression is to be used in the bill that the definition is necessary; so that, if he moves the amendments to the various clauses, the definition may be ultimately considered.

MR. N. KUMARAN: In that case I will move amendment 45 now. I beg to move that "made or obtained since the date of this Regulation" be inserted between "property" and "left". I would also add a verbal correction. After 'Regulation' add 'and' in line 3, since otherwise the clause would not read well. "Acquired or obtained since the date of the proposed regulation"—this portion of the clause is found in the draft bill submitted by the Ezhava Law Committee.

MR. K. P. RAMAN PILLAI: Louder, please.

MR. N. KUMARAN: Clause 14 in part 4 of the draft bill submitted by the Ezhava Law Committee is this:

"On the death of the Ezhava male, the wife and children shall be entitled to the whole of the self-acquired separate property acquired or obtained since the date of the proposed regulation."

This clause was introduced by the Ezhava Law Committee for various reasons. In the first place—

MR. G. PARAMESVARAN PILLAI: Louder, please.

MR. N. KUMARAN: In the first place, the Law Committee thought that the provision that they recommended should not disappoint the expectations the members of the community had with respect to inheritance.

In the second place, they also thought that, by enacting this provision, the dissenting section of the *misra* *azhi* Ezhavas would be greatly conciliated as also that section of the pure *marumakkathayees* who, though very few in number, would rather have a half-way rest-house of *misradayan* before reaching the ultimate goal of *makkathayan*. But the Select Committee thought that that would be narrowing the benefit which was intended to be given to the members of the community by the provision of clause 15. The Select Committee was also of the opinion that the Law Committee's provision would lead to difficulties in practice. The Select Committee's report says:

[Mr. V. Subba Aiyar.]

"The result of this is that in the case of a pure *marumakkathayee* his wife and children will not inherit any of such properties. They will not therefore be in any way benefited by the proposed rule which affords a premium to undesirable litigation. In many cases it will be very difficult to say when an acquisition was made. That will lead to ruinous litigation between the parties."

MR. N. RAMAKRISHNA PILLAI: May I know which is the clause that is to be amended now?

DEPUTY PRESIDENT: Clause 15.

MR. N. KUMARAN: On this ground the Select Committee thought that this provision was not necessary and therefore they removed it. My position is that that is a very salutary provision and has to be accepted. The difficulty pointed out by the Select Committee that it would lead to ruinous litigation between the parties cannot, I think, be easily substantiated. The Ezhava Law Committee said that this provision would save the community from a lot of ruinous litigation. The Select Committee held the contrary view. At any rate, I do not think that it would be very difficult to ascertain when an acquisition has been made in the name of the intestate. The difficulty pointed out by the Select Committee was that it would not be easy to determine when a particular acquisition was made. Now we know that in our title deeds the dates are definitely given. I do not think there would be any difficulty in a court of law to decide, if necessary, the date of any particular acquisition. I, therefore, think that the fear entertained by the Select Committee is not well founded.

On the other hand, it is desirable that this provision should be there; so that there will not only be less litigation, but also the advantage that the dissenting sections in the community will have less ground for complaint, as a portion of the self-acquisitions will be excluded from the operation of the rule of *makkathayan*. There will not be any hardships, because those persons who have made acquisitions prior to the date of this Regulation may execute wills in favour of their children in respect of such properties. Therefore the acceptance of this provision will only be advantageous to the working of this Regulation and I therefore commend this to the acceptance of the House.

MR. N. PADMANABHA PILLAI: I second it.

MR. V. SUBBA AIYAR: Sir, I am sorry I have to oppose this amendment. It is moved by a member of the community, and if I oppose it, it should be on the ground that the advantages of accepting the amendment would be very few, whereas the disadvantages would be very many, and I make bold to assert that it will be ruinous to the community if we accept the amendment. In the first place, although the Ezhava Law Committee put in that clause in the bill, when it was threshed out by the Select Committee, arguments were advanced against the recommendations of the Committee and I believe that almost all the

members of the Committee were present then. I believe, at any rate Mr. Govindan, Mr. Kumaran Asan and Mr. Bhutalingam Aiyar were present.

DEPUTY PRESIDENT: It is not correct to say that all the members were present.

MR. V. SUBBA AIYAR: Three of the members including the President were present and they were convinced that the proposals suggested by the Select Committee were very reasonable and ought to be adopted. The reasons were the following.

In the first place, when we are legislating for a community and trying to give particular rights and advantages to the wife and children of an Ezhava, it will be absurd to enact that that advantage should be suspended for ever and we do not know when they will have it. The crucial test in a case of inheritance is the law in force at the time when the succession happens and not the law in force at the time when the man made his acquisition. Therefore, if a person dies after the passing of this Regulation, the principles of succession regarding his property ought to be Regulated by the law in force at the time of his death. Therefore we have nothing to do with the date of the acquisition of property. That is a very important circumstance to be noted.

Then, secondly, the majority of Ezhavas are *marumakkathayees*, and under the law in force now, the children of such Ezhavas are not entitled to get anything out of their father's property. To tell them "Wait until your father earns money hereafter; then you may have a share of his acquisition"; is I think, not a desirable matter at all. *Marumakkathayan* Ezhavas will not in the least be benefited by the proposed legislation because it is only the money that one is to earn hereafter, of which the wife and children will be entitled to a share. That, I beg to say, is an absolutely undesirable circumstance, especially when practically all the *marumakkathayan* Ezhavas desire to give away the whole of their property to their children.

Thirdly, the most important circumstance is, if you adopt this clause, a particular class of people to which I belong, *viz.*, lawyers, will be benefited, and, after litigation, there will be very little left for division. I can draft a written statement now without even waiting for a case! The moment a man dies, the widow and children will say that the properties have all been acquired by the deceased after the passing of this Regulation. The nephew will say that the property was acquired before the passing of the Regulation. My friend Mr. Kumaran says that the document—the title deed—will give the date of acquisition. I will give you a few instances. An Ezhava may have dealings in money. He may advance money on promissory notes or other security. Let us say, an Ezhava has lent Rs. 10,000. The moment this Regulation is passed he recovers his outstandings and he invests it in movable property. How are we to prove after 15 or 20 years that this money had been originally lent on simple bonds or promissory notes, before the passing of this Regulation? The acquisition of

[Mr. T. K. Velu Pillai.]

movable property is after the passing of the Regulation, but the money paid for it has been earned by him before the passing of the Regulation. Even if the heirs are in a position to bring forward the persons who had borrowed from the deceased on promissory notes or oral promises, the court will naturally infer that, in the absence of anything to show that the promissory note or other document should be genuine, such witnesses are false and produced to defeat the provisions of the Regulation. As a matter of fact it might be that an Ezhava had his acquisitions before the passing of this Regulation. So that in every case the question will be whether the acquisition was made before or after the passing of this Regulation. I ask the community seriously whether such a state of affairs is desirable in the interest of the community. I can understand that no law ought to be made to have retrospective effect. Here it is not giving retrospective effect. The rule of succession will be the law at the time of the death, so that, it is not retrospective effect, but only a necessary consequence of the law. We thought that it ought not to be made possible to contest the date of the acquisition. These circumstances weighed with us when we discussed the question. I, therefore, beg to oppose the amendment. Personally I regret I cannot accept it.

MR. T. K. VELU PILLAI: Sir, I rise to support Mr. Kumaran, because I think that the amendment is absolutely necessary. Mr. Subba Aiyar has pointed out that if the amendment is adopted it will be to the detriment of the Ezhava community. The first consideration that ought to weigh with us is that the clause refers to property left undisposed of by an Ezhava at the time of his death. The starting point is the death of the person who owns the property. My friend Mr. Subba Aiyar has, to a considerable extent, been influenced by the observations of the learned Judges in the 35 T. L. R. case. The effect of the decision was to enable a retro-active provision of the law to the evident confusion of *marumakkathayam tarwads*, particularly Nair *tarwads*. Their Honours read a meaning into section 17 of the Nair Regulation which certainly was not present to the mind of the legislature, as it was distinctly laid down that section 26 of the Nair Regulation ought to control the operation of section 17. The learned Judges thought that, as a measure of simplicity, section 26 might be neglected for all practical purposes. Sir, some judges appear not to have even referred to section 26, and as has been apparent from the case reported in 12 T. L. J. 414, and some judges do not care to enter into the spirit of the section.

DEPUTY PRESIDENT: Probably, the attention of their Honours was not drawn to it.

MR. T. K. VELU PILLAI: Sir, I can see the point, if the decision was of the Punjab High Court or the Bombay High Court in which case the judges might require the decision to be placed before them; but when judges are dealing with a small regulation of 26 sections, when these judges are well-versed in the law and usages of the community concerned, I cannot for a moment sympathise with the view that the section was not brought to their notice.

DEPUTY PRESIDENT: It is the duty of the counsel to have drawn the attention of their honours.

MR. T. K. VELU PILLAI: I have heard of a barrister's statement. When his client asked the barrister why he was carrying a lot of books to the court, the barrister replied: "All these books are not for me, but for the judges who do not know the law." (Laughter.) That is not true in the case of the judges of the Travancore High Court. The rights of the people will not be prejudiced by the fact that even though this section is not amended they can make wills; so that there will not be any difficulty so far as nephews are concerned. I really do not understand the position of the Law Member when he referred to the Ezhava Law Committee's report to establish his case and when he was thus prepared to controvert other facts that go against his case. The Ezhava Law Committee's report definitely points out that the section shall apply only to properties acquired after the passing of this Regulation. Mr. Subba Aiyar accepts only such portions of the report as he wants. There may be other difficulties also; for instance, the word 'children' gives some trouble, as it did, to some of the judges of the High Court in the 12 T. L. R. case. 'Children' means children of the first generation or it may mean descendants; so that litigation of a very serious kind will be ushered in. Mr. Subba Aiyar is an altruistic person. Though as a lawyer he may not be against all litigation, he is interested in the Ezhava community and hence his altruism.

DEPUTY PRESIDENT: He has spoken as a member of this House and not as a lawyer.

MR. T. K. VELU PILLAI: The position of a lawyer does not always collide with that of a member of this House. Anyhow Mr. Subba Aiyar is altruistic. All that I say is that, if the amendment of Mr. Kumaran is not accepted, Ezhava *tarwads* also will be subject to the same difficulties as Nair *tarwads* after the decision in the 35 T. L. R. and 12 T. L. J. cases. It is best that we give some point of time from which an Ezhava should acquire the new rights. If it is given retrospective effect, although an Ezhava died 6 or 7 years ago, his son who would not have got anything at the time of his father's death might file suits. All this will end in confusion and if my friend has got the interest of the Ezhava community at heart he will kindly see that no such controversy is created.

MR. V. SUBBA AIYAR: Evidently my friend is considering whether after the passing of this Regulation children would be included as regards the property already vested.

MR. M. GOVINDAN: I oppose the amendment. Mr. Velu Pillai was saying that there was some difficulty about the time and all that. All the confusion that arose with regard to the 8, 9 and 12 T. L. J. cases refer to *makkathayam* property in respect of which we have made provision in clause 32 here. We have not come to that as yet. It is in respect of the *partibility* of *makkathayam* property. Here we are concerned with the *devolution* of the self-acquisition, and in respect of self-acquisition, the very word 'self-acquisition' is sufficiently definite to

[Mr. N. Ramakrishna Pillai.]

indicate that it is during one's life-time that the acquisition should be made. Of course the acquisition made during the life-time of the predecessor will not be comprised in the term 'self-acquisition'. So there is no danger with regard to time, even if we simply say 'self-acquisition'.

MR. T. K. VELU PILLAI: May I point out that the words are "self-acquired or separate property".

MR. M. GOVINDAN: "Separate property" is definite enough. There is no vagueness attached to the "separate property" of one person.

With regard to the compromise with respect to the *misra-dayees*, I should have had no objection to it, having been myself a party in making the recommendation that it should be limited, but for the fact, that at the Select Committee's meeting, it was pointed out very cogently by the members there, that it would introduce confusion for the reason that the learned Law Member pointed out, *viz.* the date on which the self-acquisition comes into being in respect of even immovable property in Travancore is not necessarily the date of registration of the document, since the acquisition may be made orally.

DEPUTY PRESIDENT: Mr. Kumaran's amendment does not deal with the date of the collection of funds but with the date of the acquisition of property which forms the subject of dispute.

MR. M. GOVINDAN: Suppose it is mere money and remains as money. There are such cases also, and in the case of movable property there will be no registered document to show the date of acquisition. So we should not be led away by the fact that in respect of some immovable property we have registered documents. My idea is that Mr. Subba Aiyar's argument with regard to the vagueness attaching to the date of acquisition is conclusive against the amendment proposed. So I would oppose the amendment and propose that the section, as amended by the Select Committee, be adopted.

MR. N. RAMAKRISHNA PILLAI: I oppose this amendment and I would also support the view that no alteration in the clause is necessary. There is absolutely no principle on which this amendment could be supported. It will also be most unreasonable to adopt this amendment. It is not the date of the acquisition which ought to guide us in a matter of succession. The real question in such cases is what is the law which governs the succession to a person's property at the time of his death. It is with reference to the date of the death of the person and not with reference to the date of the acquisition that the question of succession is to be judged. Once the right of succession is conceded to the children, in respect of this kind of property, it will be quite unreasonable to create any restriction founded upon the date of the acquisition of the property.

I would also oppose the amendment on account of the practical difficulties which the adoption of the amendment will give rise to. The question whether the acquisitions made by a person are his own is itself a very difficult question to settle in some cases. The creation of a further distinction in regard to this kind of property based upon the date of its acquisition means the creation of another element of confusion and dispute which the courts themselves will find it very hard to decide. The practical difficulties in the way of fixing the exact date of the acquisition for the purpose of inheritance are really very serious as pointed out by the learned Law Member. The reasons given by Mr. Subba Aiyar in support of his position appear to me to be very convincing. It will be dangerous to restrict the application of the section to cases where the properties are acquired after the coming into force of this Regulation.

In this connection I have to point out that, in regard to the partition of *makkathayam* property, I have proposed an amendment in clause 32, to make it clear whether that clause applied to property acquired before or after the Regulation. But the case of succession stands on an entirely different footing from that of partition.

With these remarks, I oppose the amendment.

MR. G. PARAMESVARAN PILLAI: I beg to support the amendment moved by Mr. Kumaran. I have not been convinced by what has been stated by either Mr. Subba Aiyar or Mr. Govindan in opposing this amendment. It may be noted that, under clause 3, the Regulation makes an express proviso to the effect that nothing in this Regulation shall confer any right on the parties to or the offspring of a marriage dissolved before this Regulation comes into force. I should consider it desirable to extend the application of such a saving clause to the case of devolution of self-acquisition as contemplated in the Regulation, especially in view of the debate that we have had in regard to the acceptance of clause 15 itself. I am sure that the acceptance of this saving clause will not prejudice the community in any manner as apprehended by Mr. Subba Aiyar.

Two arguments were advanced against the acceptance of the amendment. Firstly, it was not easy to point out definitely the date of the acquisition, and it might lead to confusion, especially in regard to money transactions. I should consider that in relation to money transactions the date of acquisition is easily ascertained, because, in respect of such acquisition, after the date of the passing of this Regulation, the accounts which will necessarily be kept will furnish a safe guide. And, in regard to the acquisition of immovable properties forming the subject matter of dispute, there may not arise any great difficulty since we may expect reliable evidence being made available as to acquisitions made after the passing of this Regulation. It was stated that, in case the amendment was accepted, the *marumakkathayam* community of the Ezhavas would be deprived of the benefit that would be conferred by this Regulation. I should consider that without this Regulation, certainly, they would not have had any benefit at all, except that

[Mr. K. Paramesvaran Pillai.]

which is conferred upon them by wills or gift deeds. Now that we are giving them a Regulation which provides for the devolution of self-acquired property upon children, it is certainly not unfair that we restrict the scope of this clause to properties acquired after the Regulation comes into force. It may even then be open to the father to execute wills or to execute gift deeds in respect of properties already acquired before the date of this Regulation. It was suggested that it would be hard to tell them that the acquisition made by the father or grandfather forty years hence would alone be given to them. I do not think that such an apprehension is well-founded in the case of this progressive community. The other remarks made by Mr. Subba Aiyar appear to me to require no answer. I should consider it very desirable that such a saving clause should be put in so that it might at least serve as a compromise to the party represented by my friend Mr. Paramesvaran. So, I would gladly support the amendment.

MR. K. PARAMESVARAN PILLAI: Sir, I have great pleasure in supporting the amendment proposed by Mr. Kumaran. I think it is a very reasonable proposal, and I fail to understand the arguments advanced by the learned mover of the bill, the Law Member, in opposing the amendment. Of course, he says that, according to the interpretation of statutes, it is the law that prevails at the time when the inheritance opens, which applies to a question of inheritance, and that, therefore, ordinarily the section will have retrospective effect. That is perfectly intelligible. But he goes further and says that, because it is so, we must not make legislative provision restricting its operation to acquisition made subsequent to the coming into force of this Regulation. That is what I cannot understand. According to the ordinary canons of legislation, no law can have retrospective effect. But it is otherwise with the law of inheritance to some extent. It is therefore proposed to make it clear that it is not intended to give retrospective effect to this Regulation. That, it appears to me, is a very sound position.

Now, Sir, coming to the merits of the case, there has been much discussion yesterday here in respect of the law of intestate succession in the case of Ezhavas. The question was whether *misradayam* should be perpetuated or whether the whole of a man's self-acquired and separate property should go to his widow and children. Of course, for the reasons which then prevailed with me, I voted on the side of the provision contained in the bill; but it appears to me, in view, especially, of the minority of the community holding a contrary opinion, that we must restrict its application to as reasonable an extent as possible.

Secondly, one observation made by the learned member of the *Marumakkathayam* Committee appeals to me very strongly. That is a quotation from Bentham on the "*Theory of legislation*." It is in paragraph 43 of the report and is to this effect:—"Any scheme of legislation on inheritance should, as far as possible, avoid disappointment

of expectations." That is a principle of legislation which is universally accepted. As it now stands, the expectation has been raised in the minds of the undivided members of an Ezhava *tarwad* that they would inherit the whole or a moiety according as they are *marumakkathayees* or *misradayees*, of the self-acquired and separate property of the members of their *tarwad*. If possible, we must frame the Regulation in such a way as not to disappoint that expectation lawfully and reasonably raised in their minds. I should say it is the duty of this House to do so. In natural justice and equity also, I do not see any objection to the acceptance of this amendment; because we are creating a new statutory right in favour of children and, in doing so, we are entitled to restrict it to any extent we deem desirable. In social matters, we should take the line of least resistance. For these reasons, I support the amendment.

MR. K. P. RAMAN PILLAI: I thought it unnecessary to speak on this amendment since we had so much discussion about the major amendment proposed to clause 15. To my great surprise, I find that the arguments that were advanced yesterday in support of the amendment and which the majority in this House rejected yesterday, are being advanced to-day for the purpose of supporting this minor amendment. Yesterday, considerations of minority and questions of natural justice and equity, did not weigh with the majority in this House in rejecting the two amendments that were brought forward. Now, by accepting this amendment, I fear we shall be making a regular mess of matters and exhibiting ourselves to be a set of ridiculous legislators in the eye of the civilised world. We shall be creating a very curious system of inheritance by which there will come to exist the *marumakkathayam* intestate, on whose death, perhaps, there will be nothing for his children to inherit. He may have acquired nothing after the passing of this law. There is the *misradayee* intestate on whose death the acquisition made till the passing of this Regulation will devolve according to *misradayam*, and the acquisition made since the passing of this Regulation will follow the *makkathayam* system; so that we shall only be multiplying the evils and exhibiting ourselves to be illogical and confused in our ideas. I, therefore, very strongly oppose this amendment in consonance with the view that was taken and accepted by the House yesterday.

MR. K. C. RAJA RAJA VARMA: After having spoken rather strongly on the provision settled by the Select Committee, I am glad to support the amendment now brought forward by Mr. Kumaran. To me, it appears, this amendment would take away, to a very large extent, the sweeping nature and the hardship of the law enunciated by the provision now settled by the Select Committee. This amendment will also be in consonance with another principle that, in a matter of social legislation, it is not desirable that vested rights should be allowed by the law to go in a particular way, or expedient to obstruct its natural way or to divert it to the opposite side. That would have been the tendency which the provision, as settled by the Select Committee and decided by this House yesterday, would have set up. I, therefore, support the amendment.

[Deputy President.]

MR. N. KUMARAN: After listening to the arguments advanced by the learned Law Member as well as Mr. K. P. Raman Pillai, I believe the balance of advantage would be on the side of allowing greater scope for the operation of clause 15 of this Regulation. That is to say, restricting the principle accepted under clause 15 by this provision would probably lead to some sort of confusion, which did not strike me at the time I moved the amendment, more especially with respect to the acquisition in regard to movables. Mr. Subba Aiyar pointed out that in the case of such acquisition it is probable that disputes might arise with respect to the source of the money and also to the date on which the man made the acquisition.

DEPUTY PRESIDENT: Am I to understand that you withdraw your amendment?

MR. N. KUMARAN: I shall come to that. I shall make a few more observations and then submit what exactly I am going to do. With respect to the difficulties pointed out by Mr. Velu Pillai as well as Mr. Paramesvaran Pillai, my view is that they can be removed by adding that amendment to section 32 to which its subject-matter properly relates. So far as this amendment is concerned, even when I moved it, I was not very anxious that it should be accepted.

DEPUTY PRESIDENT: That is rather unfortunate. The time of the Council has been wasted. It is certainly not complimentary. We took you to be very serious; and if you now come and say that you did not want it even when you moved it, that is rather unfortunate. You are at perfect liberty to change your conviction and withdraw; but to say that you were not very anxious about the fate of the amendment even at the very outset is not very agreeable to the House.

MR. N. KUMARAN: I am afraid I am misunderstood. I never said that I did not want the amendment at the outset. I attach varying degrees of importance to my various amendments, so that it may be unreasonable if I assert that I am equally anxious about the acceptance by this House, of all my amendments. Some of them are of primary importance involving questions of principle and I would press them with all my earnestness. The amendment in question deals only with the scope of a rule and is of secondary importance. In that view of the matter, I am not pressing the amendments.

DEPUTY PRESIDENT: Mr. Kumaran asks for permission to the amendment. Does this House permit him to withdraw?

The amendment was, by leave, withdrawn.

MR. K. P. RAMAN PILLAI: Are we to understand that the first amendment has been withdrawn by Mr. Kumaran?

DEPUTY PRESIDENT: Yes, it has been withdrawn, and he has withdrawn the other amendment also.

MR. N. KUMARAN: I beg to move that the following proviso be added to clause, 15 :

"Provided that, if any child of such Ezhava should have predeceased him, the issue how-low-so-ever, of such child, together with the widow, if any, in the case of a man, shall take the same share which such child would have taken, had it survived the intestate father."

Clause 15, as it stands, applies only to the devolution of property on the death of the intestate leaving him surviving, his widow and children or children alone. Clause 15 says: "On the death of an Ezhava male domiciled in Travancore, leaving him surviving both widow and children or children alone, they shall be entitled to the whole of the self-acquired or separate property left undisposed of by him at his death". It is not clear that the issue of a child, which might have predeceased the father, is entitled to a share in the property of the intestate.

MR. V. SUBBA AIYAR: The explanation is intended to apply to all.

MR. K. PARAMESVARAN PILLAI: That is the explanation in clause 32.

MR. V. SUBBA AIYAR: There is an explanation in that chapter itself.

DEPUTY PRESIDENT: There is an explanation in section 19. It does not appear as an explanation at all.

MR. N. KUMARAN: The expression 'children' appears in clauses 16 and 17, in the explanation attached to clause 19, and in the explanation attached to sub-clause (1) in clause 32. In the two explanations the same thing is said with respect to the expression 'children'. In explanation 2 attached to section 19, the definition given is: "The expression 'children' includes the *thavazhee* of daughters in the female line how-low-so-ever", thereby indicating—if we can extend the meaning of the word 'children', given in that explanation, to clause 15—that the word is intended to mean only children, that is, the sons and daughters of the intestate as well as the descendants of the daughters. The amendment that I propose would enable not only the children of daughters, but also the children of sons, to inherit the property of the intestate. Now, the question, when evidence was recorded by the Ezhava Law Committee, was this, namely, whether the self-acquisition of an Ezhava should descend exclusively to his wife and children or jointly to his *makkathayam* and *marumakkathayam* heirs as under the *misradayam* system of inheritance. When the witnesses spoke in favour of *makkathayam*, they might have meant only that both the sons and daughters should receive equal treatment at the hands of the legislature. There is no reason why a distinction should be made with respect to the devolution of properties when they descend a degree and come to grandchildren. *Makkathayam* does not mean devolution of property to the issue of the daughters alone in case the sons and daughters die before succession opens. I think that, unless this amendment is accepted, the benefit arising from

[Mr. V. Subba Aiyar.]

makkathayam provided in this Regulation will be considerably reduced and its operation unjustly and unreasonably restricted. I will quote an illustration. If a man dies leaving the children of his sons as well as of his daughters, under this provision the children of the daughters alone are entitled to succeed and take the intestate's estates, and not the children of the sons. I, therefore, think that this provision is very necessary. Otherwise, the provision for *makkathayam* would be more or less halting and nugatory and would lose much of its beneficial tendency. I would, therefore, commend this amendment to the acceptance of this House.

MR. A. GOVINDA MENON: I beg to second that amendment.

MR. V. SUBBA AIYAR: Sir, I will state what I have to say on this point and leave the House to make up its mind. The question is, when a person dies who, in the case of a male intestate, should be entitled to his property, and then, if among his children any one of them predeceased the intestate leaving heirs, whether such heirs should also be entitled to inherit the property of the intestate? In the absence of any coparcenary interest among the children in the property of the father, it is rather difficult to understand how anybody other than the children of the father will be entitled to the property. Therefore, ordinarily, even though a person may leave two sons and two daughters and one or two of them are dead, so far as succession to the property of the intestate is concerned, it ought to be confined to his own children; but an explanation has been put in, *viz.*, that "children" may include *thavazhee* children or the children of a deceased daughter. Even that, I may say, is not quite consistent, but all the same it has been put in as, ordinarily, even if a person is alive, he gives his property to his wife and children. The wife and children, under the existing law, have all along been treated as a sub-*tarwad*. The daughters have been given the treatment that they get under the *marumakkathayam* law. With a view to give effect to the existing law and sentiment, the daughter's *thavazhee* is made to represent the daughter predeceasing the intestate. But to extend it further to the children of the males and their descendants also is, to my mind, not desirable, and going rather too far. I do not think, therefore, that it would be quite proper to accept the amendment. In any event, I very strongly object to the widow of a deceased son also being put in there. In other words, the acceptance of the amendment will mean that succession should be on the basis that everybody has a joint interest in a man's self-acquisition, and on that basis the son's children have a share in the property, that is to say, that we shall be embodying the principles of the *Mitakshara* law, when the essential condition precedent that the property should be coparcenary is not there.

MR. T. K. VELU PILLAI: May I know from Mr. Subba Aiyar whether the word "children" is not merely a word of limitation?

MR. V. SUBBA AIYAR: I do not quite follow.

MR. T. K. VELU PILLAI: I ask whether the word "children" is not merely a word of limitation. I request an answer.

MR. V. SUBBA AIYAR: I do not understand the question.

DEPUTY PRESIDENT: We are not now considering that question. His explanation is clear.

MR. T. K. VELU PILLAI: I am very sorry the Law Member does not understand the expression "word of limitation". By "limitation" we describe certain classes of heirs. My question is whether the Law Member is aware of any decision which goes to the extent of saying that the word "children" may sometimes amount to heirs of the body—whether he is aware of the case of Queen *versus* King?

MR. V. SUBBA AIYAR: The son's sons cannot, I think, be regarded as heirs of the body and I am not aware of any ruling to that effect. That is my position. I only want to make the position clear and leave it to the House to decide whether the explanation should be made wider still.

DEPUTY PRESIDENT: Mr. Kumaran, do you press your amendment?

MR. N. KUMARAN: Yes, I press it. I am willing to delete the word "widow". Then I think Mr. Subba Aiyar would accept it.

MR. V. SUBBA AIYAR: It is not left to me to accept it now. The House should decide whether your amendment may be modified. I am only one among you. I only give out what seems to me to be correct.

MR. N. KUMARAN: It is a very important provision and in all systems of law we find that sons are treated, so far as inheritance is concerned, much better than the daughters. There is no reason why, when we are accepting *makkathayam*, we should not give the same treatment to the sons and daughters. I have cited certain instances from which it would appear that the treatment that might accrue to the children of the sons who might have predeceased the father might be very unfortunate, while the children of the daughters would be able to inherit the whole of the property of the deceased. There is no doubt that we are not completely changing the system of law which this community is following by the enactment of this Regulation. Nevertheless, I think it will not be a very revolutionary change in that system of law if we accept this amendment.

DEPUTY PRESIDENT: The question is:—

Add the following proviso to clause 15.

"Provided that if any child of such Ezhava should have predeceased him, the issue how-low-so-ever, of such child, together with the widow, if any, in the case of a son, shall take the same share which such child would have taken, had it survived the intestate father."

MR. N. KUMARAN: I do not want the word "widow". It may be deleted.

[Deputy President.]

DEPUTY PRESIDENT: Please read the proviso as you want it.

MR. N. KUMARAN: "Provided that if any child of such Ezhava should have predeceased him, the issue, how-low-so-ever, of such child, shall take the same share which such child would have taken, had it survived the intestate father."

With the permission of the House, the portion "*together with the widow, if any, in the case of a son*" was deleted from the amendment.

The rest of the amendment was put to the vote and carried.

MR. A. GOVINDA MENON: I do not move the next amendment of which I had given notice, viz., to delete the whole of clause 15 and substitute a new clause instead.

Clause 15, as amended, was then put to the vote and carried.

The clause was added to the bill.

Clause 16.

DEPUTY PRESIDENT: Mr. Kumaran, your amendment will be considered at the end of the chapter.

The following amendments were not moved:—

MR. N. KUMARAN: Substitute "lineal descendants" for "children" in line 2.

MR. M. R. MADHAVA VARIAR: Lines 2 to 4. Delete "one-half of his self-acquired or separate property,.....on his thavazhee" and insert the following:—

"The widow shall take the profits of his self-acquired or separate property left undisposed of by him at his death, for maintenance, and after her death the property shall devolve on her husband's thavazhee." Lines 6 and 7: Delete "upon his widow" and insert the words "upon his mother's thavazhee."

MR. K. P. RAMAN PILLAI: I move that the following proviso be inserted at the end of clause 16

"Provided that the widow and children shall be entitled to be in possession of the intestate's property till the Division is effected"

The object in sending up this amendment is—

DEPUTY PRESIDENT: That clause does not speak of any children.

MR. K. P. RAMAN PILLAI: That is what I am thinking of. Very probably that amendment was sent in regard to clause 15.

DEPUTY PRESIDENT: I think we are now at clause 16.

MR. K. P. RAMAN PILLAI: Whether it is a clerical error or not, my object was—

DEPUTY PRESIDENT: I am not concerned with that. I will give you permission to move an amendment with regard to clause 16. I just bring to your notice that there is no word "children" in clause 16.

MR. K. P. RAMAN PILLAI: This ought to have been an amendment to clause 15. I wanted to put in 'widow and children' so that the *anandaravans* might go to court in the case of disputes.

DEPUTY PRESIDENT: Your original amendment refers to clause 16. Apparently, if Mr. Paramesvaran's amendment was accepted, you wanted to move this amendment.

MR. K. P. RAMAN PILLAI: I would move this amendment omitting the expression "and children" in my amendment. I move that the following proviso be inserted at the end of clause 16:—

"Provided that the widow shall be entitled to be in possession of the intestate's property till the division is effected"

It will not be possible to decide out of court which share shall go to the widow and which to the intestate's *thavazhee*. In such cases, my object is to give the widow possession, so that the members of the *thavazhee* will first go to court. The widow should not be driven to go to court especially since her children may not be of age.

DEPUTY PRESIDENT: No, no, you cannot contemplate that when there are children, for then the *thavazhee* will not get anything.

MR. K. P. RAMAN PILLAI: Considering that the widow is the weaker party, I submit that it would be in the fitness of things to allow her the possession of the properties and to drive the *thavazhee* to the court.

MR. M. GOVINDAN: I second it.

MR. N. KUMARAN: I support it.

MR. V. SUBBA AIYAR: Personally I have no objection to accept the amendment.

MR. G. PARAMESVARAN PILLAI: Suppose there are two widows.

MR. V. SUBBA AIYAR: They would join together.

MR. N. RAMAKRISHNA PILLAI: With regard to the *ad interim* possession, I have also sent in an amendment so as to cover—

DEPUTY PRESIDENT: There is no amendment of yours to clause 16. I cannot give you any answer until we come to the clause concerned.

The question that the following proviso be inserted at the end of clause 16 was put to the vote and carried.

"Provided that the widow shall be entitled to be in possession of the intestate's property till the division is effected"

The following amendment was not moved:

MR. A. GOVINDA MENON: Delete and substitute the following as clause 16:—

"Where the intestate dies leaving him or her surviving none of the relations mentioned in section 15, his or her property shall devolve on the paternal line, the nearer excluding the more remote, and the full blood, the half-blood"

MR. V. SUBBA AIYAR: There is one small mistake! In the last line of clause 16, "the absence of any member of his *thavazhee*" would

[Mr. N. Kumaran.]

be quite enough. I therefore move that "member" be substituted for "members" in the last line of clause 16.

MR. S. PARAMESVARA AIYAR: I second it.

The amendment was put to the vote and carried.

Clause 16 as amended was then put to the vote and carried.

The clause was added to the bill.

Clause 17

The following amendments were not moved:—

MR. N. KUMARAN: Line 2. Substitute "lineal descendants" for the word "children".

MR. M. R. MADHAVA VARIAR: Lines 5 & 6. Delete the words "and the undivided" and "and the divided".

MR. A. GOVINDA MENON: Delete the whole clause.

DEPUTY PRESIDENT: If you want to speak against the clause, I will give you a chance before I put the clause to the vote.

MR. V. SUBBA AIYAR: Before that, I would move that, to avoid the definition framed by Mr. Kumaran in section 17, the expression "none of the heirs mentioned in sections 15 and 16" may be used. That would avoid the definition of "lineal descendants" and "children".

DEPUTY PRESIDENT: You may formally move it.

MR. V. SUBBA AIYAR: I move that "none of the heirs mentioned in section 15 or 16" be substituted for the words "neither the wife nor children nor any member of his *thavazhee*".

MR. S. PARAMESVARA AIYAR: I second it.

MR. N. KUMARAN: The difficulty that I find is this. There is the expression "leaving him surviving no children". Here, unless we mean by children the issues —

DEPUTY PRESIDENT: Your amendment provides for it. "In the absence of any of the heirs enumerated in clauses 15 and 16"—that is Mr. Subba Aiyar's amendment.

MR. N. KUMARAN: That is only an enabling provision. In some cases the children may not be alive, but the grandchildren may be alive. Will the expression "children" cover grandchildren also?

DEPUTY PRESIDENT: The son's sons will be heirs according to your amendment.

MR. N. KUMARAN: I admit that. The difficulty is with reference to clause 16.

DEPUTY PRESIDENT: Do you oppose the amendment?

MR. N. KUMARAN: I oppose it. My view is that, so far as clause 17 goes, the amendment of Mr. Subba Aiyar may be accepted; but it would not remove all the difficulties with which we will be confronted. In section 16 we find the expression "children". If we interpret clause 6 by itself, it will be found that, unless we interpret "children" to mean

issue also, it will not carry the meaning that we give to the line of succession in section 15.

MR. V. SUBBA AIYAR: How do you propose to interpret "children" in section 16?

MR. N. KUMARAN: Lineal descendants.

MR. V. SUBBA AIYAR: The word does not occur in section 16. That is just the mistake you are committing. If the expression "lineal descendant" were there, it would be all right. As it is there is the expression "children".

MR. N. KUMARAN: I want to point out one difficulty.

DEPUTY PRESIDENT: You are at perfect liberty to move that amendment when we come to the end of the chapter. In the meantime, have you any objection to accept Mr. Subba Aiyar's amendment?

MR. N. KUMARAN: My friend Mr. Subba Aiyar probably wanted to avoid the definition of the expression "lineal descendants" which I wanted to move as an amendment.

MR. V. SUBBA AIYAR: Because in none of the sections seen as yet have we the expression "lineal descendants".

MR. N. KUMARAN: That was why I wanted to move it after all these clauses had been discussed. That was the only difficulty. I am not yet convinced that my friend's amendment would remove the difficulty.

MR. V. SUBBA AIYAR: If the definition of "lineal descendants" alone is put in somewhere, that expression "lineal descendant" should be substituted for "children" and then it must be defined. We cannot define a thing which does not find a place in the body of the bill.

MR. N. KUMARAN: It is not my fault.

DEPUTY PRESIDENT: It is not anybody's fault. If you make the House accept your views, the words "lineal descendants" may be put in.

MR. K. P. RAMAN PILLAI: May I know whether the expression "none of the heirs contemplated in sections 15 and 16" will satisfy the need contemplated by the amendment?

DEPUTY PRESIDENT: That is Mr. Subba Aiyar's amendment.

MR. K. P. RAMAN PILLAI: If the word 'mentioned' is used, somebody might interpret that the term "children" does not refer to grandchildren; but if you use the word "contemplated" instead of "mentioned" it would be better.

MR. V. SUBBA AIYAR: "Referred to" would be better, I think.

DEPUTY PRESIDENT: "The issue how-low-so-ever, of such children". Is not that sufficiently comprehensive? That is the amendment which the House has accepted in clause 15. So Mr. Subba Aiyar's amendment is "in the absence of the heirs mentioned in sections 15 and 16". It is sufficiently exhaustive.

[Mr. K. Parameswaran Pillai]

MR. K. PARAMESVARAN PILLAI: Before putting it to the vote I wish to know whether the definition of 'children' is proposed to be put in.

DEPUTY PRESIDENT: I cannot anticipate the wishes of the House. I can allow Mr. Kumaran to move the amendment when we come to the end of the chapter. Whether the House is going to commit itself to a particular definition is a different matter. The word "children" is sought to be defined in this bill itself. When we come to that, I will permit Mr. Kumaran to move that amendment, the whole question can be discussed and the Council may say that the word "children" shall mean so and so. That will remove the difficulty.

The question that "none of the heirs referred to in section 15 or 16" be substituted for the words "neither the wife nor children nor any member of his *thavazhee*" in clause 17 was then put to the vote and carried.

Clause 17, as amended, was added to the bill.

Clause 18.

MR. P. PARAMESVARAN: മവ ൧൦ വകുപ്പിൽ ൨-ാം വരിയിൽ "സ്വത്തു" എന്നുകുറിത്തു "മൃഗവനം" എന്ന് ചേർക്കണം.

DEPUTY PRESIDENT: The amendment is:
In line I, add the words "the whole of" before the words "her self-acquired".

MR. M. GOVINDAN: I second it.

MR. V. SUBBA AIYAR: I accept it.

The amendment was put to the vote and carried.

MR. P. PARAMESVARAN: ൩-ാം വരിയിൽ ഉള്ള പട്ടത്തിനു പകരം "അവൾക്കുവേണ്ട അവളുടെ അമ്മയുടെ താഴ്വഴിയിൽ ആരു ഇല്ലാതിരുന്നാൽ അവളുടെ സ്വത്ത് ഭർത്താവിനു ചേരുന്നതാകുന്നു." എന്ന് ചേർക്കണം.

MR. M. GOVINDAN: There need not be any amendment. That is the clause itself.

MR. P. PARAMESVARAN: മലയാളം തജിമയിൽ എഴുതിയിരിക്കുന്നതു മഹറാഷ്ട്രീയത്തിലാണു.

MR. S. PARAMESVARA AIYAR: The member himself furnished the English translation for his amendments.

MR. P. PARAMESVARAN: എന്നാൽ ആ ഭേദഗതി ഞാൻ പ്രയോഗിക്കുന്നില്ല.

The amendment was by leave withdrawn.

MR. K. PARAMESVARAN PILLAI: Before clause 18 is put to the vote, I have one suggestion to make. The words "No members of her *thavazhee*" should be added between "surviving" and "her".

MR. N. KUMARAN : I have got a similar amendment. In line 3, insert "no lineal descendants but only" between "surviving" and "her". That is exactly what my friend says.

DEPUTY PRESIDENT : Mr. Paramesvaran Pillai, please move your amendment formally.

MR. K. PARAMESVARAN PILLAI : I move that "no members of her *thavazhee* but" be inserted between "surviving" and "her" in line 3 of clause 18.

MR. K. C. RAJARAJA VARMA : I second it.

MR. V. SUBBA AIYAR : I accept it.

The question that "no members of her *thavazhee* but" be inserted between "surviving" and "her" in line 3, clause 18, was then put to the vote and carried.

The question that clause 18, as amended, stand part of the bill, was then put to the vote and carried.

The clause as amended was added to the bill.

Clause 19.

DEPUTY PRESIDENT : For the present, Mr. Kumaran, do you want to move your amendment.

MR. N. KUMARAN : Yes, Sir, because it involves not only the expression 'lineal descendants' but other corrections also. It is only explanatory. It does not involve any principle and, I believe, Mr. Subba Aiyar would accept it.

DEPUTY PRESIDENT : "Members of her *thavazhee*" would include her lineal descendants how-low-so-ever.

MR. N. KUMARAN : "Her *thavazhee*" is included in her mother's *thavazhee* which is more comprehensive. Hence there is a confusion. The object of the amendment is to avoid it. Therefore, I put it like this. In lines 2 and 3, substitute the words "her own lineal descendants nor other members of her mother's *thavazhee*" for the words "members of her or her mother's *thavazhee*". Her "*thavazhee*" is included in her mother's *thavazhee*, and, therefore, the amendment is necessary.

MR. K. DOMINIC TOMMAN : I second it.

MR. V. SUBBA AIYAR : The difficulty is in sections 15 and 16. We put in the words "children" there. If we now put in the expression 'lineal descendants'—

DEPUTY PRESIDENT : The difficulty can be avoided thus. "Neither the members of her *thavazhee* nor other members of her mother's *thavazhee*". I believe that would be enough. As far as possible, the expression "lineal descendants" might be avoided for the present. Then Mr. Subba Aiyar might accept it.

MR. N. KUMARAN : Yes, Sir. I will read it in the amended form. In lines 2 and 3, substitute the words "members of her *thavazhee* nor other members of her mother's *thavazhee*" for the words "members of her or her mother's *thavazhee*".

[Mr. K. P. Raman Pillai.]

MR. K. P. RAMAN PILLAI: I second it.

MR. V. SUBBA AIYAR: I accept it.

The question that "members of her *thavazhee* nor other members of her mother's *thavazhee*" be substituted for the words "members of her or her mother's *thavazhee*" in lines 2 and 3 of clause 19 was then put to the vote and carried.

The following amendment was not moved:

MR. M. R. MADHAVA VARIAR: Line 3. Delete the words "nor husband" in clause 19.

MR. N. KUMARAN: I beg to move that, in lines 3 and 4, "more remote" be inserted between "her" and "female ascendants". My amendment is to make the meaning clear.

DEPUTY PRESIDENT: I think the Select Committee's wording is clear enough. I suppose "her ascendants" are certainly more remote.

MR. V. SUBBA AIYAR: "Other more remote" might be inserted instead of "more remote".

MR. M. GOVINDAN: The word "her" also may be omitted. "Other more remote" would do.

MR. N. KUMARAN: Then I move the words "other more remote" be inserted between "her" and "female ascendants" in lines 3 and 4.

MR. K. P. RAMAN PILLAI: I second it.

The question that "other more remote" be inserted between "her" and "female ascendants" in lines 3 and 4 in clause 19 was put to the vote and carried.

MR. K. P. RAMAN PILLAI: I move that, in line 3 of explanation I, "income of *tarwad*" be substituted for "*tarwad* funds", because, obviously, the intention of the Select Committee in using the expression "funds" is to denote income. *Tarwad* funds, might include various sums of money that might be due to the *tarwad* on account of mortgages or hypothecations and so forth. It is not, I am sure, intended that, if a *karanavan* acquires property with the aid of money due to the *tarwad*, one-half of such acquisition should go to his widowed wife and children. The object, evidently, is to make the *karanavan* more industrious and more mindful of the interest of the *tarwad*, to increase the income of the *tarwad* and make acquisitions thereby, and out of such acquisitions which are the results of his own perseverance and industry, to make one-half go to his wife and children; so that, I think, it would be expressing the intention of the committee more clearly and it would be less misleading, if the expression "income of *tarwad*" be substituted for "*tarwad* funds".

MR. N. KUMARAN : I second it. I think it is clearly a mistake. The expression "funds" is more comprehensive and it would not have been the intention of the Select Committee to include money belonging to the *tarwad*, for the *karanavan* might not have earned anything. It is only in respect of the accession, as a result of the *karanavan's* labours and to the extent to which the *tarwad* is enriched that the wife and children must be entitled to have a share. I, therefore, support Mr. Raman Pillai, and think that this amendment is necessary. Otherwise, it will lead to serious litigation between the parties.

MR. V. SUBBA AIYAR : I think that it would be better to make it plainer still. I would rather say "income from the *tarwad* property" instead of "income of *tarwad*" which is equally vague.

MR. K. P. RAMAN PILLAI : I accept it.

MR. V. SUBBA AIYAR : In that case, I accept the amendment. The question that, in line 3 of explanation I in clause 19, "income from the *tarwad* property" be substituted for "*tarwad* funds", was then put to the vote and carried.

MR. N. KUMARAN : I beg to move that the following be added at end of explanation I:—

"But such acquisitions shall not include improvements effected by the *karanavan* in *tarwad* property."

The object of this amendment is to avoid unnecessary disputes that may arise between the children on the one hand and the *anandaravans* on the other. The *karanavan* might have made improvements in the *tarwad* property and that might be claimed as accession to the *tarwad* property. The *tarwad* might own a few acres and the *karanavan* might make some improvements in them. The absence of this provision will enable the sons to claim a good portion of such *tarwad* property which contingency has to be avoided as it would diminish the corpus of the *tarwad* property. Further, the question of ascertaining the value of the improvements and the share which the sons and widow must take, will lead to serious complications. It is better that the improvements effected in the *tarwad* property, by the *karanavan*, might be removed from the operation of this section.

DEPUTY PRESIDENT : You give the *karanavan's* children credit for the waste lands bought by the *karanavan*, but not the waste lands improved by him.

MR. N. KUMARAN : Any improvement effected by the *karanavan* must not be taken to be an accession to the *tarwad* property for the purpose of this bill.

MR. M. GOVINDAN : I second it.

MR. V. SUBBA AIYAR : I have no objection to accept it.

MR. N. RAMAKRISHNA PILLAI : There is an amendment to delete the whole of explanation I.

DEPUTY PRESIDENT : Before I put the amendment to the vote, I will hear you. You may move your amendment.

[Mr. N. Ramakrishna Pillai]

MR. N. KUMARAN: I have also another amendment to delete the whole of explanation II.

DEPUTY PRESIDENT: We will come to that.

MR. N. RAMAKRISHNA PILLAI: The proposal is that explanation I may be deleted and that more suitable provision may be made elsewhere as I have ventured to point out. It seems to me that the provision made in the bill is fraught with mischievous consequences. It is difficult to measure exactly the extent of the acquisitions made by the person in management of a *tarwad* by means of family funds especially during any long period of time; at any rate a resort to court is made inevitable in the majority of cases, whether there is any increase of *tarwad* income or not. A similar proposal was made by the *Marumakkathayam* Committee, and it appears from their report that there was strong objection to this suggestion which was ultimately dropped. The reasons given by Mr. Krishnan Pandalai, who objected to this provision, may be referred to in this connection as those reasons appear to me to be very convincing. He says:

"On principle no provision in favour of wife and children can be made from accessions or additions made to *tarwad* property by the labour or skill of the *karanavan* or manager and with the help of *tarwad* funds. Such accessions are, in law, *tarwad* property. The *karanavan*'s office is honorary and should remain so both in the interest of the office and of the *tarwad*. In practice, the proposal to give half of the father's double share of the accessions to his children, would lead to much fruitless litigation, and the benefit which the children would derive from a successful suit would, in the vast majority of cases, never compensate the loss of time and energy involved in a suit between relations. As a step to dissuade bad *karanavans* from speculation, it is to be doubted whether this problematical future benefit to their children will stay the hand of such men. It is to be noted that this provision, to which I am unable to agree, is over and above the provision in favour of children, to which all of us agree, of one-half of the self-acquisitions of the deceased, whether he was *karanavan* or not. To prove that a *karanavan* had self-acquisition is not more difficult than to prove the self-acquisition of a junior member in management."

To me it appears that this provision will prove to be a fruitful source of useless litigation between the children and the *seshakars*, and that in the majority of cases the children will derive absolutely no benefit by this provision. This is an invitation to the children to try a chance and in very many cases the result will probably be ruinous to both the children and the *tarwad* on the whole. The children are tempted to find out whether they can get something out of the supposed accession to the *tarwad* property even in those cases where there has not been any substantial increase during the father's management. It is better to make no provision at all with regard to the *karanavan*'s acquisitions made as *karanavan*. If, however, some provision is required, it is better to make such a provision, as is indicated by the amendment I have proposed to insert after clause 26.

DEPUTY PRESIDENT: You may reserve that till we come to clause 26.

MR. N. RAMAKRISHNA PILLAI: I refer to it here in order to know whether it will not be preferable to attach it to the clause now under discussion. The amendment proposed is this:

"The *karanavan* or the manager for the time being shall be entitled at the end of the year to appropriate besides his maintenance an amount not exceeding 25 per cent. of the net realised income of the *tarwad* up to a maximum of one thousand rupees. So far as this amount is concerned it shall be deemed to be his self-acquisition."

I have proposed this amendment as an alternative provision to the one now under consideration. This is adopted from the Cochin Nair Regulation and I believe it is practically more beneficial to the children. At least, it minimises the labour of litigation in that it leaves the task of appropriation to the father, who has to determine whether he is to appropriate anything and, if so, what amount for the children. The controversy in this case will only be as to whether the *karanavan's* appropriation was correct or not. The father himself will take care to see that the children do not involve themselves in fruitless litigation after his death. The children will also have the advantage of spending less for court fees than would otherwise be the case.

Under these circumstances, my submission is that the provision under discussion is likely to be mischievous in its effects, and that, if any provision is to be made at all, it is better to adopt the amendment I have proposed as clause 26.

MR. K. PARAMESVARAN PILLAI: I second it. It may appear rather inequitable that, while in the case of every junior member who makes acquisitions his children should inherit it after him, the children of a *karanavan* should be deprived of the benefit of the acquisition made by him even though with the help of and with *tarwad* funds; but if we look at the question closely, a provision of this kind would seem to be confronted with grave dangers. Of course, a partial recognition of the difficulties is indicated by the amendments proposed to the explanation by Mr. Kumaran himself. In making the proposal, he has only made matters worse; because he says that the improvements made to *tarwad* properties should not be included in determining his acquisition, as it is difficult to value them. But that would be placing a premium on the neglect of *tarwad* properties by the *karanavan*. The *karanavan* might in such a case instead of improving *tarwad* gardens utilise the surplus income, as was suggested by the learned President himself, in purchasing waste lands and improving them or he might acquire new properties even at the risk of neglecting those belonging to the *tarwad*. Of course, to some extent it has been remedied by the amendment of Mr. K. P. Raman Pillai; but still it appears to me that the difficulties are very great. Let us suppose, as the learned mover himself said, that the assets of the *tarwad* consist of money invested in a savings bank and the *karanavan* merely allows the interest to accumulate. There will be a large amount of money left. That he allowed the interest to accumulate is no merit at all, and he has spent absolutely no time or labour in such acquisition. Should that amount which happened to accumulate be considered his self-acquisition?

Then again, a certain amount of the income of the *tarwad* might accumulate on account of the mismanagement or neglect of the

[Mr. V. Subba Aiyar.]

karanavan; for instance, interest due upon hypothecation bonds, or rents due on lands leased. Suppose a man allows all these to fall into arrears. At the time of his death, a large amount in the way of interest or rent may be available. Should it be considered as part of the self-acquisition or part of the corpus of the *tarwad*? These are difficult questions to answer. So, all that we can now say with any amount of certainty is that if any immovable property is purchased by him after meeting the expenses of the *tarwad* and maintaining the members properly it might be taken to be the acquisition of the *karanavan*. These difficulties presented themselves to the *Marumakkathayam* Committee and that is the reason why they gave it up. The advantage of such a provision might not after all be sufficient to compensate for all the litigation and loss that might be caused to the community on account of this provision. This is a matter which must be very seriously considered by the House. It is not so simple as it might seem. There may be a few hard cases, but that should not induce us to legislate in a matter beset with difficulties, without deliberation. I appeal to the House to give the matter their best consideration before they give their consent to such a dangerous proposition.

MR. V. SUBBA AIYAR: Sir, the question for consideration is whether the *karanavan* in management of the *tarwad* should be given some consideration to the extent of his self-acquisition which is ascertained and which will be available for his wife and children. The question, I admit, may be rather difficult; but the principle has to be recognised; *viz.*, that if a junior member leaves self-acquired property it goes to the wife and children. The mere fact that the *karanavan* undertook the management—

DEPUTY PRESIDENT: The *karanavan* can surrender the management of the *tarwad*.

MR. V. SUBBA AIYAR: Of course, in his case, whatever he earns is presumed to be for the benefit of the *tarwad*. Unless we get rid of the *karanavan* by means of partition, we will have—

DEPUTY PRESIDENT: But for centuries they have been managing the *tarwad* without any statutory consideration.

MR. V. SUBBA AIYAR: For that matter, for centuries even in the case of the *karanavan*, one-half of his self-acquisition has been given to his wife and children, when the matter is amicably settled out of court; whereas, if they go to court, they cannot get anything, because all the *karanavan*'s acquisitions are presumed to belong to the *tarwad*. Anyhow, everybody seems to recognise that, in the case of the *karanavan*, his children should get a portion of his acquisitions. Mr. N. Ramakrishna Pillai proposes some other method. He says that the portion that the wife and children are to get must be 25 per cent. of the annual income, whether he was able to realise all the income or not, and that that must be subject to a maximum of

Rs. 1,000. Suppose he deposits Rs. 1,000 in the savings bank or gets compound interest on it. The determination of the extent of self-acquisition on the above basis will lead to many complications. I believe that it is a worse method of settling the *karanavan's* share. The difference between the extent of property when he became *karanavan*, and that when he died, is ordinarily regarded as his self-acquisition. I do not say that this is a very accurate method. But there will not be any difficulty in working it out. For this reason, it seems to be better than the other proposals. Under the circumstances, it is agreed by all that the *karanavan* should be given some consideration for the trouble he takes in the management of the *tarwad* property. We may wait and see how the proposal of the Select Committee works, and if that is found unsatisfactory in practical working, it is open to this House to modify it again. I therefore oppose the amendment.

MR. M. GOVINDAN: I oppose the amendment. There is a presumption in the case of the acquisition of a *karanavan* that it is made with the aid of *tarwad* funds and hence the probability that when a *karanavan* dies the children may not be able to claim anything at all. The post of the *karanavan* will become a very undesirable one for which there will be absolutely no incentive for any Ezhava to aspire. To make it so unattractive is a very undesirable state of affairs. My idea is that the *karanavan's* children should be able to claim a share. It is not much against the practice in Travancore either. There is a community in south Travancore which even now gives a share of the *tarwad* properties. I am referring to the "*Ukanthudama*" which every south Travancore lawyer knows. In the case of the *misradayam* Ezhavas in our partition deeds we used to call the half-share to the children "*Ukanthudama*" until recently. The practice in my taluk is to give the *karanavan's* children a share. No *karanavan's* children are left without any provision in settlements out of court. If they come to court, they get nothing. I, therefore, oppose the amendment.

DEPUTY PRESIDENT: Have you anything to say by way of reply, Mr. Ramakrishna Pillai?

MR. N. RAMAKRISHNA PILLAI. I am still of opinion that this is a very mischievous provision to adopt, and that the amendment I have suggested is preferable. Mr. Subba Aiyar says that it is very difficult to determine whether the *karanavan's* appropriation is correct or not. I do not see so much difficulty at all. On the contrary, I think the question as to the extent of a *karanavan's* acquisitions during the whole course of his management is a wider and a more complex question and as such far more difficult to determine.

In the case of a provision for appropriation by the *karanavan* himself, speculative litigation will considerably be diminished by the duty being imposed upon the father of making the appropriation. Again, in a suit between the sons and the *seshakars* as to the extent of the acquisitions to the *tarwad*, the conduct of the deceased and the affairs of the *tarwad* will certainly form the subject of discussion and criticism in court and it will be a deplorable state of affairs if this is to go on at

[Mr. V. Subba Aiyar.]

the death of every *karanavan* who is supposed to have made accessions to *tarwad* property.

With these observations, I support my motion to delete explanation I to clause 19.

The question that explanation I to clause 19 be deleted was then put to the vote and lost.

MR. M. GOVINDAN: I have another amendment to explanation I. I have not been able to give due notice because I was co-opted rather late. The principle is that the manager of a *tarwad* may give one-half to his children. It is only consistent with this principle to allow the manager of a *makkathayam* sub-*tarwad* also to do so. *Tarwad* would not include the future *makkathayam* *tarwad* for this reason. The incidents of the properties are different.

DEPUTY PRESIDENT: I think, *tarwad* is defined in clause 4 as follows:—" *Tarwad* means and includes all the members of a *marumakkathayam* family, with community of property."

MR. M. GOVINDAN: A *marumakkathayam* family is the expression, but the matrilineal principle is not wholly accepted in the case of *makkathayam* property. There "children" includes son's children also. My amendment is this: As it is, the explanation reads thus:—" If the deceased person was in management of his or her *tarwad*, etc". After "*tarwad*" I propose to insert the words " or *makkathayam* sub-*tarwad*." There is no difficulty. It is a clearly understood term.

DEPUTY PRESIDENT: *Makkathayam* sub-*tarwad* has not been defined here. Would "joint property" be sufficient?

MR. M. GOVINDAN: I have no objection; but it is too wide. So it would be clear if we use "*makkathayam* sub-*tarwad*".

MR. V. SUBBA AIYAR: The High Court not seem to approve the expression "sub-*tarwad*".

MR. M. GOVINDAN: Sub-*tarwad* is *tarwad* within a *tarwad*.

DEPUTY PRESIDENT: I am not concerned with the merits of your amendment. I just want you to suggest it in a definite form in which I might place it before the House.

MR. M. GOVINDAN: There is no harm even in supplementing the definition.

DEPUTY PRESIDENT: I am not concerned with the harm or otherwise. I only want a definite form.

MR. M. GOVINDAN: I propose that "*makkathayam* sub-*tarwad*" be inserted between '*tarwad*' and 'one-half' in line one of explanation I.

MR. N. KUMARAN: I second it.

MR. V. SUBBA AIYAR: I cannot accept it as "*makkathayam* sub-*tarwad*".

Mr. M. GOVINDAN: "Undivided *makkathayam* property" would be sufficient for my purposes.

Mr. V. SUBBA AIYAR: I have no objection. I would propose the words "or of undivided *makkathayam* property".

Mr. M. GOVINDAN: I accept it.

The question that the words "or of undivided *makkathayam* property" be inserted between the words "*tarwad*" and "one-half", was then put to the vote and carried.

The Council adjourned for lunch at 2 p. m. to meet again at 3 p. m.

The Council re-assembled at 3 p. m.

DEPUTY PRESIDENT: Mr. Subba Aiyar, I think we are now at explanation II to clause 19.

Mr. M. GOVINDAN: I have not finished. I have got a verbal amendment to make in explanation I. It is necessary in view of the amendment that has already been carried.

DEPUTY PRESIDENT: Where?

Mr. M. GOVINDAN: That is in explanation I. My amendment is to insert "such" after "income from" and the words "or *makkathayam*" after "*tarwad*."

DEPUTY PRESIDENT: Yes, you may formally move the amendment.

Mr. M. GOVINDAN: I propose that the word "such" be inserted after "income from" and the words "or *makkathayam*" after "*tarwad*" in line 3.

Mr. S. PARAMESVARA AIYAR: I second it.

Mr. V. SUBBA AIYAR: I accept the amendment. It is necessitated by the introduction of the words "*makkathayam* properties" in the first line of the explanation.

Mr. P. K. NARAYANA PILLAI: I accept the amendment, but suggest the addition of words "as the case may be". Otherwise it would be leading to yet another ambiguity.

DEPUTY PRESIDENT: Do you accept that amendment, Mr. Govindan?

Mr. M. GOVINDAN: Yes.

Mr. V. SUBBA AIYAR: It will read as "during such management with the aid of income from such *tarwad* or *makkathayam* properties as the case be".

Mr. Govindan's amendment as modified by Mr. P. K. Narayana Pillai was put to the vote and carried.

DEPUTY PRESIDENT: As regards explanation II, it strikes me that it does not come in as part of clause 19. My view is that it

[Deputy President.]

must be a separate clause extending its application to the preceding or succeeding clauses.

MR. V. SUBBA AIYAR: It does not matter. We may put it, in and the definitions may cover the whole part.

DEPUTY PRESIDENT: As it stands, it requires amendment.

MR. V. SUBBA AIYAR: Let us see what the amendment proposed is. Then we may put it under the section we want. I believe we may put it under section 19 itself.

DEPUTY PRESIDENT: I may say that the only objection to this is that the word "children" does not appear in section 19.

MR. V. SUBBA AIYAR: We shall have to modify even that section.

DEPUTY PRESIDENT: I want to modify the form before we take up other amendments.

MR. V. SUBBA AIYAR: Mr. Kumaran was proposing some amendment.

MR. N. KUMARAN: My amendment is to delete the whole of explanation II. It becomes unnecessary in view of other amendments.

DEPUTY PRESIDENT: You say that it will be unnecessary if some amendments that you are proposing are accepted. I will let you move your amendment now. You may just read out your amendment.

MR. N. KUMARAN: In clause 16, substitute "Lineal descendants" for "children" in line 2.

MR. V. SUBBA AIYAR: Will Mr. Kumaran permit me to move an amendment to the existing explanation itself? Then, it will serve all the purposes.

MR. N. KUMARAN: My point is that, if all these amendments are carried, explanation II will become unnecessary.

DEPUTY PRESIDENT: Instead of moving these amendments with reference to each clause, you may say "the expression 'children' shall include.....". If you put it like that, it will be perfectly unobjectionable.

MR. M. GOVINDAN: Clause 15 as amended will not agree with Mr. Kumaran's amendment. It may apply most probably to clauses 16 and 17.

MR. N. KUMARAN: I suppose I may move the amendments one by one.

DEPUTY PRESIDENT: I will not allow you to move the amendments with reference to each of these clauses. You will have to move a consolidated amendment that may cover all these clauses.

MR. N. KUMARAN: I shall do that. Before moving the amendments, I shall submit my grounds. To begin with, we have the expression "children" in line 2. In view of the amendment that was carried to clause 15 viz., the proviso, the expression "children" will have to be used in a more extended form. Section 16 provides for the devolution of property in the absence of children or their issue. Therefore for "children" we must introduce an expression which would cover not only children but also children's children, i. e., all the heirs and the lineal descendants of the intestate. I would therefore propose that instead of "children" the expression "lineal descendants" may be used in this and in all the other sections.

DEPUTY PRESIDENT: What other sections?

MR. N. KUMARAN: Section 17 also in line 2.

DEPUTY PRESIDENT: Then pass on to section 18.

MR. N. KUMARAN: In section 18, in order to be consistent, in lines 2 and 3, instead of "*thavazhee*" the word "lineal descendants" will have to be put in.

MR. V. SUBBA AIYAR: *Thavazhee* will include female children.

DEPUTY PRESIDENT: Their sons too.

MR. V. SUBBA AIYAR: But not the descendants of such sons.

MR. N. KUMARAN: Therefore I propose an amendment to that section. Of course, there was already an amendment to that clause carried by the House. The clause as amended stands thus:

"If she dies leaving no members of her *thavazhee* or other members of her *thavazhee*, the husband etc".

What I propose is that in the place of that amendment my amendment might be accepted. That is to say, instead of "her *thavazhi*" the words "lineal descendants" might be substituted in clause 18, line 2.

DEPUTY PRESIDENT: Then, in regard to section 19?

MR. N. KUMARAN: In that section also, the expression "lineal descendants" will have to be used between lines 2 and 3.

MR. V. SUBBA AIYAR: To convey all that, I would have the whole thing in explanation II itself.

MR. N. KUMARAN: I have absolutely no objection.

MR. V. SUBBA AIYAR: Then, may I move an amendment to the explanation?

DEPUTY PRESIDENT: If it is acceptable to him, he will accept it.

MR. V. SUBBA AIYAR: This is my amendment:—

The expression "children" in the case of an intestate male and the expression her own "*thavazhee*" in the case of intestate female, shall, for the purpose of this part, include lineal descendants of such intestate male or female how-low-so-ever.

MR. N. KUMARAN: I accept it.

DEPUTY PRESIDENT: Just see whether that fully embodies the view.

[Mr. V. Subba Aiyar.]

MR. V. SUBBA AIYAR: In the case of an intestate male, we are concerned with the word "children" that will include the issue of children how-low-so-ever. In the case of intestate female, we have got "her own *thavazhee*". The *thavazhee* of an intestate female means children of such intestate female or descendants of such female how-low-so-ever.

MR. P. K. NARAYANA PILLAI: May I know whether this explanation is to pervade the whole of Part IV?

MR. V. SUBBA AIYAR: Yes.

MR. N. KUMARAN: Probably, that will land us in difficulty when we go to section 32, because the word "children" occurs there also.

MR. M. GOVINDAN: I would like to suggest a little change.

The expression "for the purpose of this Part" may be omitted in explanation I, for the reason that, if that portion will descend, it cannot be partible also.

MR. P. K. NARAYANA PILLAI: May I point out another difficulty in accepting the proposed definition? I am referring to clause 15. It is also in the same part. This definition would apply to the word "children" in that clause also.

DEPUTY PRESIDENT: But that clause was amended.

MR. P. K. NARAYANA PILLAI: "The issue how-low-so-ever of such children shall take the same share....."

This doctrine of representation is not provided for in clause 15. It is the proviso that has been added. The main clause stands.

DEPUTY PRESIDENT: The main clause is controlled by the proviso.

MR. P. K. NARAYANA PILLAI: The expression "children" occurring in section 15, in the light of the explanation that has now been added, would mean that the self-acquired property of a deceased Ezhava male would devolve not only upon his children but also upon all the lineal descendants.

DEPUTY PRESIDENT: In the absence of children, it would devolve on his lineal descendants.

MR. P. K. NARAYANA PILLAI: The proviso lays down that, in the case of the predeceased children of an Ezhava dying intestate, the descendants of those children would take the place of their father. That is very good. So in that particular clause 15, the expression "children" is being used in two senses. So, for the purpose of explanation, would it not be sufficient to have the explanation to the part only from clause 16 downwards?

MR. V. SUBBA AIYAR: In the light of the explanation, we may even omit the proviso.

DEPUTY PRESIDENT: You cannot go back at this stage. You have to accept settled facts, and make the necessary changes.

MR. V. SUBBA AIYAR: If any consequential amendments are necessary, I shall move when the bill is finally read before the Council.

DEPUTY PRESIDENT: That is the position now before the House. It is open to discussion. The amendment now before the House is an important one which introduces for the first time into the *marumakkathayam* system like that of the Ezhavas the right of representation of descendants of the male issue as well to the properties to which their father would have succeeded when the succession opens. Does any gentleman wish to speak?

MR. V. SUBBA AIYAR: It has been accepted by the House.

DEPUTY PRESIDENT: So far as clause 15 is concerned, it has already been accepted. I am now placing the amendment which Mr. Kumaran has accepted for discussion. I shall put it to the vote, if there are no members coming forward by way of support or opposition.

MR. J. JOHN NIDIRY: I support the amendment.

MR. N. RAMAKRISHNA PILLAI: In this connection, I have also sent up an amendment. That is with reference to clause 32. I have put forward that amendment in connection with clause 32, so that that amendment may apply to this part also.

DEPUTY PRESIDENT: You want the Council to consider that amendment now.

MR. V. SUBBA AIYAR: We do not know how the clause is going to be passed. We cannot anticipate.

MR. N. RAMAKRISHNA PILLAI: I do not want to anticipate. I simply point out that, if that amendment is adopted, there is no necessity to provide an explanation under this clause.

DEPUTY PRESIDENT: Do you suggest that the consideration of this explanation be postponed until clause 32 is taken up?

MR. N. RAMAKRISHNA PILLAI: I would suggest that, because, for the purpose of inheritance and partition, the explanation of the expression "children" must be applicable.

DEPUTY PRESIDENT: The privilege which Mr. Kumaran claimed for son's sons relates to the succession to the *makkathayam* or separate property of an individual dying intestate. You are bringing in a larger question.

MR. N. RAMAKRISHNA PILLAI: There are now two kinds of properties—*tarwad* properties and *makkathayam* and self-acquired properties. We are now dealing with both of these.

DEPUTY PRESIDENT: I think we are only dealing in this particular chapter with what may be regarded as separate or self-acquired property and *makkathayam* property and not *tarwad* property.

MR. N. RAMAKRISHNA PILLAI: No. There are two kinds of properties, the *tarwad* properties with reference to which the principles

[Mr. V. Subba Aiyar.] : The law of succession of the *marumakkathayam* law of succession should apply, and *makkathayam* properties in respect of which the principles of succession in regard to that kind of property should apply.

DEPUTY PRESIDENT: That is now being settled.

MR. N. RAMAKRISHNA PILLAI: The provision for partition of, as well as succession to, the *tarwad* as well as *makkathayam* properties may be made more conveniently in a subsequent portion of the bill, which deals with partition. I therefore sent up an amendment to delete explanation II.

DEPUTY PRESIDENT: I am not concerned with that now. Do you make any formal motion to the effect that the consideration of explanation II be postponed till the consideration of the remaining clauses in the bill?

MR. N. RAMAKRISHNA PILLAI: Yes, I move that the consideration of explanation II be postponed till the other clauses are disposed of.

MR. G. PARAMESVARAN PILLAI: I second the motion.

MR. V. SUBBA AIYAR: I object to the motion. Let me explain the point. *Makkathayam* property as it is contemplated in this bill consists of property inherited from or given or derived by the father. It may include all these three classes. We are for the very first time legislating as to the line of inheritance by Part IV. So far as *makkathayam* properties are concerned, they are known as such and people have been in possession of *makkathayam* properties as members of a sub-*tarwad*. Clause 32 raises a difficult point, i. e., the whole of the *makkathayam* property will be made partible equally among all the children by the deceased. In that expression "children" may include, according to my friend Mr. Ramakrishna Pillai, also the lineal descendants. The objection to that course will be very serious, for, in the case of *makkathayam* property which has already vested, as it were, in the children, that is to say, *makkathayam* property acquired before the date of this Regulation and vested in the children, the children have been treating it as sub-*tarwad* property and the brothers and sisters or sister's *thavazhee* have been enjoying it. We are now legislating for properties acquired hereafter. Properties already vested cannot now be divested, so that, when we go to clause 32, distinctions have to be made. I do not know why we should postpone the consideration of this provision until clause 32 is considered. We may consider Part IV and make suitable amendment to clause 32 if necessary.

MR. N. RAMAKRISHNA PILLAI: What I say is that provision may be made in that clause for both of these.

MR. V. SUBBA AIYAR: The rules of inheritance contained in this part will apply to cases arising after the commencement of this Regulation. But in the case of *makkathayam* properties enjoyed by sub-*tarwad*s how, can we allow them to be shared by others? As I said,

if *makkathayam* properties acquired hereafter are alone to be affected, there may be no difficulty, but in the case of properties already vested, there will be considerable difficulty. I therefore object to the motion.

DEPUTY PRESIDENT: Do you withdraw your motion or press it, Mr. Ramakrishna Pillai? Why not consider the desirability of making a relevant clause when we go to that section?

MR. N. RAMAKRISHNA PILLAI: I do not press the motion. The motion was withdrawn with the leave of the Council.

DEPUTY PRESIDENT: The question is that the following be put in as explanation II to clause 19:—

The expression "children" in the case of an intestate male and the expression "*thavazhee*" in the case of an intestate female shall, for the purpose of Part IV of this Regulation, include the issues of such intestate male or female how-low-so-ever.

The motion was put to the vote and carried.

DEPUTY PRESIDENT: Is there any further amendment to be moved before the whole clause is put to the vote of the Council?

MR. K. P. RAMAN PILLAI: I think it may be advantageous to have the clause as amended read.

MR. S. PARAMESVARA AIYAR: It reads thus:

On the death of an Ezhava female domiciled in Travancore leaving her surviving neither members of her or her mother's *thavazhee* nor husband but only the *thavazhee* of her grandmother or of other more remote female ascendants, her self-acquired or separate property left undisposed of by her at her death shall devolve upon such *thavazhee*, the nearer and the undivided excluding the more remote and the divided.

MR. V. SUBBA AIYAR: It appears to me that the expression used towards the close of the clause may lead to difficulties. The words "the undivided" may be omitted. "The nearer excluding the more remote" is the expression ordinarily used. I move that the words "and the undivided" and "and the divided" be deleted.

MR. S. PARAMESVARA AIYAR: I second the motion.

DEPUTY PRESIDENT: The question is that the words "and the undivided" and "and the divided" be deleted.

The motion was put to the vote and carried.

MR. S. PARAMESVARA AIYAR: Explanation I as amended reads thus:

If the deceased person was in management of his or her *tarwad*, or of *makkathayam* property, one-half of the acquisitions, if any, made by such person during such management with the aid of the income from such *tarwad* or *makkathayam* property shall be treated as the person's self-acquisition for the purpose of this Part in addition to other self-acquisition.

MR. M. GOVINDAN: I suggest that the words "for the purpose of this Part" be omitted, because there is no point in confining it to this part. When we come to the part dealing with partition of *makkathayam* properties, this will have to be excluded from partition also. So, the expression will be a pointless descriptive phrase. If we mean to confine this description to this part, then the expression "for the

[Mr. M. Govindan.]

purpose of this Part" would be correct. We have defined self-acquisition for the purpose of intestate succession. But the effect of it is a little more far-reaching than for this part. So, it will have to extend to partition also to a degree, because, in making partition, this will have to be excluded.

MR. V. SUBBA AIYAR: I do not quite follow my friend.

MR. M. GOVINDAN: I shall make myself very clear.

DEPUTY PRESIDENT: Will the retention of the expression in any way be prejudicial?

MR. M. GOVINDAN: It is extremely inartistic and will lend itself to artificial argument.

MR. V. SUBBA AIYAR: Is it not intended to apply to this part?

MR. M. GOVINDAN: There is the expression, but a statement without a purpose is objectionable, because we are going to make it applicable for the purpose of another part also. There is no purpose in saying "for this Part" also here. What does anybody gain by saying two or three words more?

MR. V. SUBBA AIYAR: Do you mean to say that this explanation will apply to another part?

MR. M. GOVINDAN: I am sure I have not been understood.

DEPUTY PRESIDENT: He proposes to include in the definition of self-acquisition a new description of property which till now has never been regarded as the self-acquisition of *karanavans* for the purpose of devolution.

MR. V. SUBBA AIYAR: Yes. I have expressly said so. Hence the words "for the purpose of this Part".

MR. M. GOVINDAN: That description will lend itself to an argument that, in partitioning property, if there has been no intestate successors, the question need not be considered and the property may be partitioned.

DEPUTY PRESIDENT: It would be self-acquisition.

MR. V. SUBBA AIYAR: I am sure that it will not bring in any cataclysm.

MR. M. GOVINDAN: No, I do not say that there will be any cataclysm.

MR. V. SUBBA AIYAR: It is rather difficult to follow the object of Mr. Govindan's amendment. If there is any defect in the clause as now approved by the Council, I shall rectify it at the final stage of the bill. I can bring in the necessary amendments then.

MR. M. GOVINDAN: If I have that assurance, I do not press my suggestion now.

MR. S. PARAMESVARA AIYAR: Explanation II as amended reads thus:

The expression 'children' in the case of a male intestate and the expression 'her *thavazhee*' in the case of a female intestate shall for the purposes of this Part include the issue how-low-so-ever of such interests male or female.

DEPUTY PRESIDENT: The question is that clause 19 as amended stand part of the bill.

The motion was put to the vote and carried.

Clause 19 was added to the bill.

Clause 20.

MR. N. RAMAKRISHNA PILLAI: I have an amendment to move. I want to insert a clause providing for the *ad interim* possession of properties, in cases where there are several successors.

The amendment runs as follows:

"20. (1) The eldest male member, or in the absence of a male member the senior female member, shall have the right to the possession of and management of such property as is referred to in section 15, until a division is effected.

(2) The widow or the husband, as the case may be, shall have the right to the possession and management of the properties to which either of them becomes jointly entitled with the *thavazhees* referred to in clauses 16 and 18, until a division is effected between the widow or the husband on the one hand and the *thavazhees* on the other.

(3) The senior male member, or in the absence of a male member, the senior female member, shall have the right to the possession and management of properties acquired by *thavazhees* under clauses 16, 17, 18, 19 and sub-clause (2) of this clause."

DEPUTY PRESIDENT: The provision in 20 (1) is common law. You do not want to make any change. Why should you introduce a change?

MR. V. SUBBA AIYAR: In the case of the widow, we have made the necessary provision already.

MR. N. RAMAKRISHNA PILLAI: There are two sets of successors - one preceding and the other succeeding. We have made provision for the heirs succeeding the properties of the intestate.

DEPUTY PRESIDENT: Please understand that you cannot move for the deletion of explanations I and II.

MR. N. RAMAKRISHNA PILLAI: I am not concerned with that. I am only concerned with the second part of the amendment; that is to say, the insertion of the new clause making provision for possession during the time when these properties are not divided between the heirs.

DEPUTY PRESIDENT: Sub-clauses (1) and (3) are mere statements of the common law of the country. You do not want a statute for that embodied in this legislation. Do you?

MR. N. RAMAKRISHNA PILLAI: I put the whole amendment before the Council.

DEPUTY PRESIDENT: I have to take them one by one. I am therefore asking you whether you are going to move all the parts. I suppose you admit what is contained in part (1) is common law now.

[Mr. K. C. Rajaraja Varma.]

MR. N. RAMAKRISHNA PILLAI: Common law is changed to a considerable extent. With regard to the possession and management of properties during the time when the properties are in common enjoyment, some provision appears to be necessary.

DEPUTY PRESIDENT: They form a sub-*tarwad*. That is what you are just enunciating in clause 20. That is *marumakkathayam* law pure and simple.

MR. N. RAMAKRISHNA PILLAI: I want to make provision not only for possession of property, but also for its management; and in this connection all cases have also to be provided for.

DEPUTY PRESIDENT: I suppose possession includes management. The senior male member manages, or, in his absence, the senior female member.

MR. V. SUBBA AIYAR: I may draw attention to clause 3 which says that nothing in this Regulation shall affect the existing rule of *marumakkathayam* law, custom or usage except to the extent hereinafter expressly provided for, so that, except to the extent expressly provided for herein, the ordinary law should apply and the senior member will be in management. If we try to introduce all the details of the *marumakkathayam* law, they should be exhaustive. It is not possible to be exhaustive, and therefore a saving clause is put in.

MR. N. RAMAKRISHNA PILLAI: I know that the general rules of *marumakkathayam* law are not abrogated by this Regulation. Nevertheless, I put this amendment to the vote of the House. I have only to observe that a provision with regard to the possession of properties during the time they are in common enjoyment is necessary, because we are providing for division in a subsequent portion of the bill. So, before division is effected, some provision should be made for the possession and management of such properties.

DEPUTY PRESIDENT: Do you move the amendments as a whole or separately?

MR. N. RAMAKRISHNA PILLAI: I move them separately.

DEPUTY PRESIDENT: Then you may move the first part, *i. e.*, 20 (1).

MR. N. RAMAKRISHNA PILLAI: I move that the following be inserted as clause 20 (1):

The eldest male member, or, in the absence of a male member, the senior female member, shall have the right to the possession and management of such property as is referred to in clause 15, until a division is effected.

DEPUTY PRESIDENT: Who seconds the motion?

None seconded the motion.

DEPUTY PRESIDENT: It goes.

MR. K. C. RAJARAJA VARMA: I second it.

DEPUTY PRESIDENT: It was after I said it went because it was not seconded. You are not in time.

MR. N. RAMAKRISHNA PILLAI: Then I move part (2). Insert the following as clause 20 (2):—

The widow or the husband, as the case may be, shall have the right to the possession and management of the properties, to which either of them becomes jointly entitled with *thavazhees* referred to in clauses 16 and 18, until a division is effected between the widow or the husband on the one hand and the *thavazhees* on the other.

We have made provision in clauses 16 and 17 with reference to cases where the widow and the members of a *thavazhee* inherit the properties of an intestate. We have two sets of successors in these cases. It is therefore absolutely necessary that some provision should be made with regard to the possession of properties before the division is effected between these two sets of people, because, unless some provision is made for the purpose, the two sets of heirs who are entitled to the properties are likely to come to collision. It will be extremely difficult to determine who should be in possession of the properties before the division is effected. It is for this reason that I have brought forward this amendment.

MR. K. C. RAJARAJA VARMA: I second it.

MR. V. SUBBA AIYAR: So far as the widow is concerned, we have already made provision. Where the heirs are the widow and children and the members of the deceased's *thavazhees* it is desirable to protect the widow because she should not be driven to a suit. Then the question is whether her own *thavazhee* or her husband should be in possession of the property. The difficulty is only with reference to movable property. If she dies in her husband's house, it is the husband who is likely to be in possession. If she dies in her father's or mother's *tarwad* house, the relations are likely to be in possession. So far as the husband is concerned, I would rather leave the party actually in possession to continue as such and allow the rival claimants to establish their right in a court of law. As for immovable properties, the ordinary law will apply. I do not think any special provision is necessary.

DEPUTY PRESIDENT: The question is that the following be inserted as clause 20 (2):

The widow or the husband, as the case may be, shall have the right to the possession and management of the properties to which either of them becomes jointly entitled with the *thavazhees* referred to in clauses 16 and 18 until a division is effected between the widow or the husband on the one hand and the *thavazhees* on the other.

The amendment was put to the vote and lost.

MR. N. RAMAKRISHNA PILLAI: With reference to part (3), I do not move that amendment.

The following amendments were not moved:—

MR. N. KUMARAN: Substitute 'lineal descendants' for 'children' in line 2 in clause 16.

[Mr. K. P. Raman Pillai.]

MR. N. KUMARAN: Substitute 'lineal descendants' for 'children' in line 2 in clause 17.

MR. N. KUMARAN: Substitute 'lineal descendants' for 'tharazhee' in line 2 in clause 18.

MR. N. KUMARAN: Substitute the words "her own lineal descendants nor other members of her mother's *tharazhee*" for the words "members of her or her mother's *tharazhee*" and delete explanation II in clause 19.

MR. N. RAMAKRISHNA-PILLAI: Delete explanations I and II in clause 20.

MR. A. GOVINDA MENON: Lines 2 and 3. Delete 'self-acquired or separate' between 'her' and 'property'.

MR. P. PARMESWARAN: Delete the clause and substitute the following:—
"Notwithstanding anything contained in Regulation VI of 1074, no part of separate property shall be disposed of by will".

DEPUTY PRESIDENT: The question is that clause 20 stand part of the bill.

The motion was put to the vote and carried.

Clause 20 was added to the bill.

MR. A. GOVINDA MENON: I beg to move that the words "The Tarwad and its management" be substituted for "Duties and powers of Karanavan and Anandaravan" in the title of Part VI.

The title, as it now stands, does not, in the least agree with what is said in this chapter. The only subject that is dealt with in the title is the powers and duties of *Karanavan* and *Anandaravan*. Of course, this is the title given in the Nair Regulation. But it does not accord with the contents of the chapter and the framers of the Cochin Nair Regulation have found out this mistake and amended it accordingly.

The motion was not seconded.

DEPUTY PRESIDENT: Nobody seconds the motion. It goes.
The motion fell through.

Clause 21.

MR. K. P. RAMAN PILLAI: I have sent up an amendment to delete the expression "*tarwad* necessity" in line 1 of clause 21. If I am permitted, I may move that the word "and" after the word "necessity" be also deleted.

DEPUTY PRESIDENT: Yes.

MR. K. P. RAMAN PILLAI: I move that the words "*tarwad* necessity and" in line 1 be deleted.

The members of *marumakkathayam* tarwads will have occasion to go to court to set aside documents on the usual ground of want of *tarwad* necessity, consideration and so forth, and the members of the bar who have had dealings with such people may well know the difficulty of establishing the contention implied in the expression "*tarwad* necessity". Both to the deciding courts and to the litigant public this expression has given considerable anxiety and trouble. And now the attempt on the part of the legislature is to remove the evils of the *marumakkathayam* system, and since there is provision in the section itself that the written consent of all the major members should be obtained for the purpose of selling *tarwad* property, it may be presumed that such alienations would be done only for proper *tarwad* necessity. Such being the case, I consider that the retention of this expression is superfluous. I therefore move that that expression be deleted from the clause.

MR. N. RAMAKRISHNA PILLAI: I second the amendment.

MR. V. SUBBA AIYAR: I daresay that the object of Mr. K. P. Raman Pillai and Mr. Ramakrishna Pillai is to protect the interests of the *tarwad*. If so, the deletion of the expression in question may have a contrary effect. Under the existing clause, even with the consent of the majority of the members, no alienation shall be made unless there is *tarwad* necessity. If we accept the amendment, it would lead to this. Supposing that in a *tarwad* there are two males and the children of their deceased sister who are all minors, alienation may be made with the consent of the majority of the adult members. Both the brothers may come to an understanding that the sale proceeds shall be distributed equally between their wives, with the result that, if the minor wants to set aside the document, he cannot go into the question of necessity. I do not know whether Mr. Raman Pillai desires to go to that extent. Even if the majority of the members join in the transaction, unless the alienee or the creditor, as the case may be, is in a position to prove that the alienation was for *tarwad* necessity, the alienation will not stand. That is the present law.

MR. N. RAMAKRISHNA PILLAI: May I point out that the rules of the *marumakkathayam* law are not proposed to be abrogated by the provision of this clause?

MR. V. SUBBA AIYAR: What Mr. Raman Pillai said was that, when the majority of the adult members joined in the alienation, the presumption was that it must have been for *tarwad* necessity, and that therefore the transaction would not be questioned. If we take away these words, the result will be that the courts may interpret it in a different way. Though the courts need not ordinarily go behind the wording of the section, they may sometimes attach peculiar significance to the fact that the words were in the bill as revised by the Select Committee and intentionally omitted by the Council. It is better to leave the expression as it is, since it is, perfectly harmless.

MR. N. RAMAKRISHNA PILLAI: There is another amendment.

[Mr. P. K. Narayana Pillai.]

DEPUTY PRESIDENT: Do you suggest that the proceedings of the Legislative Council will be evidence in a court of law?

MR. V. SUBBA AIYAR: Not ordinarily. We shall take the Nair Regulation which is in force. It contains the words "except for *tarwad* necessity in the case of ordinary mortgages." The next clause in the bill also contains the words. When the question comes for argument before the High Court, I shall be one of the persons to argue that the legislature by omitting the words "*tarwad* necessity" did purposely intend to lay down that, when all adult members agreed, no question of necessity could be raised in evidence. It is very dangerous therefore to delete the expression here. If it is intended that there should be *tarwad* necessity, why not state it?

MR. T. K. VELU PILLAI: I am very glad to accord my support to Mr. Subba Aiyar partly because the merits of his case are very strong, and partly for the reason that, after a very long discussion, Mr. Subba Aiyar like myself has realised that the courts do not always correctly interpret the law. (*Laughter*).

MR. V. SUBBA AIYAR: I never said that. I said that I should argue in that way.

DEPUTY PRESIDENT: We shall have to recognise that, according to all legal conceptions, the interpretation of a statute by courts of law can be the only correct interpretation whatever the object the legislature might have had in view. It is open to correct the interpretation of civil courts by re-enacting a particular statute, but the alternate privilege of interpreting a statute rests with the civil courts.

MR. T. K. VELU PILLAI: Certainly that is the position I myself recognise. I only suggest that the necessary precaution must be taken.

MR. P. K. NARAYANA PILLAI: I support the motion, though not on the identical grounds put forward by Mr. Raman Pillai. It was pointed out by Mr. Subba Aiyar on former occasions that, except to the extent that the law was to be modified, the existing *marumakkathayam* law would continue. Here, in this instance, he has taken a different view. Alienations under the *marumakkathayam* system are upheld usually on three considerations. First of all, they must be supported by consideration; then by *tarwad* necessity; and then they should also be supported by the consent of certain members of the *tarwad*. This particular clause makes mention of only two things—*tarwad* necessity and consent of members. It was once propounded by certain critics that alienations of property belonging to Nair *tarwads* might be held valid even in the absence of consideration in view of the section in the Nair Regulation similar to the present clause. That contention fortunately did not prevail and it was said that the existence of section 26 in the Nair Regulation, among others, came to the rescue of the situation. Here, Mr. Subba Aiyar omits the mention of consideration from out of the

clause and relies upon the general law as it is, for maintaining that the omission is harmless. If so, why not delete the superfluous expression 'except for *tarwad* necessity' also from this clause? The main point emphasised in this particular clause is the "consent" of the members of the *tarwad*, which consent according to the bill ought to be in writing. It is the written consent that is emphasised and not *tarwad* necessity. In these circumstances, and also in view of the fact that absolutely no mention of consideration is made in this particular clause, the contention is well founded that the expression "except for *tarwad* necessity" may be dropped. For these reasons, I am clearly of opinion that the amendment has to be accepted.

MR. M. GOVINDAN: I suppose Mr. P. K. Narayana Pillai can well remember that he wrote an article which was published in 4 T. L. J. or 3 T. L. J. on the subject. That was in answer to another article which appeared previously and which was written by another friend who is a judicial officer. That gentleman pointed out the desirability of inserting the words "for *tarwad* necessity" in the corresponding section of the Nair Regulation. Mr. Narayana Pillai pointed out in answer that the meaning was very obvious without those words. That was Mr. Narayana Pillai's position if I remember aright. If that is so, what I say is that another friend had this difficulty which is here sought to be removed by a distinct provision. Mr. Narayana Pillai was consistent all along. The difficulty at any rate was felt by one. (Laughter.)

MR. P. K. NARAYANA PILLAI: The matter subsequently came before the High Court and the High Court accepted the interpretation I put. Why remove the existing safeguards? Why not put in "except for *tarwad* necessity and consideration" also.

DEPUTY PRESIDENT: The clause does not lay down all the conditions that should be satisfied before the alienations are upheld by a court of law.

MR. V. SUBBA AIYAR: If the idea is that, except for *tarwad* necessity and consideration, no alienation of *tarwad* properties specified in the clause should be made, I would, rather than omit the words "except for *tarwad* necessity" have the words "except for *tarwad* necessity and consideration". But let us have it as it is. My point is this. When the Nair Regulation provides for the existence of *tarwad* necessity for mortgages for 12 years and less and when the present bill also follows it, the omission of the words '*tarwad* necessity' for sales and mortgages for more than twelve years will be significant. The expression 'consideration' does not appear in the next clause. As Mr. Govindan pointed out, a difficulty was felt. Mr. Narayana Pillai suggests that the matter went up to the High Court when a difficulty was felt. Why not remove it?

MR. T. K. VELU PILLAI: That was my view.

MR. V. SUBBA AIYAR: I have no objection to include "and consideration" also in the section. I shall bring it as a separate amendment. I object to Mr. Raman Pillai's amendment.

[Mr. P. K. Narayana Pillai.]

MR. N. RAMAKRISHNA PILLAI: Sir, I have tabled a similar amendment to delete the words "except for *tarwad* necessity and"; and I have also to move another amendment for inserting the words "or give discharges of mortgages with or without possession" after the words "twelve years" in line 5. I shall explain the connection between the two amendments.

DEPUTY PRESIDENT: Is there any logical connection between the two?

MR. N. RAMAKRISHNA PILLAI: Yes. My object in seconding Mr. Raman Pillai's amendment which is similar to mine is to insert the words suggested in my latter amendment, i. e., the words "or give discharges of mortgages with or without possession". If these words are inserted, the words "except for *tarwad* necessity" should not find a place in the clause, for in the case of releases there is no necessity to see whether there is *tarwad* necessity or not.

DEPUTY PRESIDENT: I suppose that that is the present law, so far as releases are concerned.

MR. N. RAMAKRISHNA PILLAI: With regard to releases, the question of *tarwad* necessity does not arise at all. This has also been pointed out in a recent decision reported in XI T. L. J., with reference to the corresponding provision of the Nair Regulation (Section 19). The question raised there was whether the *karanavan* alone can execute a release without *tarwad* necessity and consideration. The High Court held that the question of *tarwad* necessity did not arise in the case and that the *karanavan* can execute the release for consideration. That was a decision in accordance with the *marumakkathayam* law. My object in putting forward the amendment is to include cases of releases within the provisions of this clause because releases are equally important and, in some cases, a considerable amount of money will be lost to the *tarwad* if the *karanavan* alone is allowed to execute releases and raise money. As was pointed out by Mr. Subba Aiyar, the rules of *marumakkathayam* law are not intended to be abrogated and it is needless therefore to retain the words "except for *tarwad* necessity", as will also be evident from the decision reported in 7 T. L. J., page 284. Under these circumstances, my suggestion is that releases also should be brought within the purview of this clause.

DEPUTY PRESIDENT: We have had enough of discussion on this. Will you please formally move your amendment?

MR. N. RAMAKRISHNA PILLAI: I move that the words "except for *tarwad* necessity and" in line 1 be deleted and that the expression "or give discharge of mortgages with or without possession" be inserted in line 5 after the words "twelve years."

MR. P. K. NARAYANA PILLAI: In seconding the motion of Mr. Ramakrishna Pillai, I would add a further argument in view of the alteration which Mr. Subba Aiyar is about to make by introducing the

word "consideration" in the clause. I shall take a hypothetical case. Suppose there are eight adult members in a *tarwad* and the eight adult members together execute a deed of sale in favour of a stranger. The question of *tarwad* necessity may not arise if, for example, there is no one else in the *tarwad*. In such a case, if the clause is allowed to stand as it is, they will agree among themselves, execute any deed, receive the consideration and may then turn round to set aside the deed, alleging the absence of *tarwad* necessity, since the law makes that an indispensable condition. Suppose it is a case of gift. Eight adult members are certainly entitled to make a gift of property.

DEPUTY PRESIDENT: No.

MR. P. K. NARAYANA PILLAI: In the absence of any other member.

DEPUTY PRESIDENT: Yes. That is all right.

MR. P. K. NARAYANA PILLAI: There is no question of *tarwad* necessity in such a transaction. Therefore, I am pointing out to the Council that the retention of the expression "except for *tarwad* necessity" will enable people to dispute their own act in executing deeds, on the strength of non-compliance with the statutory provision.

DEPUTY PRESIDENT: That clause only contemplates sales, mortgages and leases.

MR. P. K. NARAYANA PILLAI: Even in the case of sales, my observation will hold good; for, in the instance supposed, if a sale deed is executed to satisfy a whim, can the executants themselves be heard to complain of the absence of *tarwad* necessity? So it is not difficult to imagine cases in which no question of *tarwad* necessity will arise. By introducing the word "consideration", my friend Mr. Subba Aiyar cannot seek to improve the situation. Nothing is gained by making explicit mention of consideration which is certainly implied in all sales, mortgages and leases. The contemplated addition will not meet the difficulty pointed out. I have great pleasure in supporting the amendment of Mr. Ramakrishna Pillai; and for the eventualities to which Mr. Govindan has been referring—

DEPUTY PRESIDENT: You have already addressed the Council in that matter. The particular motion that you are supporting is as regards giving discharges of mortgages.

MR. P. K. NARAYANA PILLAI: I thought we were thrown back on the prior motion by the course the discussion was taking. I was thus given an opportunity and I thought I could reinforce my views on the point dealt with. (Laughter.)

MR. V. SUBBA AIYAR: The main argument of Mr. Ramakrishna Pillai seems to be that, because he wants to include the question of discharge of mortgage by *karanaran*, the question of *tarwad* necessity should be omitted. If this is his real idea, I can assure him that we can put in a separate sentence, where the question of *tarwad* necessity will not affect so far as the discharge of releases is concerned. We need not

[Deputy President.]

delete the words "except for *tarwad* necessity" in this clause for that purpose. I am not therefore prepared to accept that proposition.

In regard to the other part of the amendment, *viz.*, the execution of releases, I am not for accepting it because the question of executing releases is not a question which is left to the sweet will and pleasure of the mortgagee himself, but if the mortgagor tenders money, the *karanavan* has to receive the money and execute the release. If the mortgagor is prepared to pay the money before the Sub-Registrar, I wish to know who should receive it. Is it to be distributed among all the members who according to my friend must join in the execution of the release? Who should collect debts due to the *tarwad*? Is it the *karanavan* or all the members jointly? If the *karanavan* is such an undesirable person as should not be entrusted with the management of the *tarwad*, I think it is necessary that we should not introduce the question of discharge.

Then in regard to the case contemplated by my friend Mr. P. K. Narayana Pillai, if a person who is the executant of some deed chooses to question his own document on the ground of want of *tarwad* necessity, the burden of proof lies upon him. Further no question of necessity will arise in such cases as such a question arises only when there are persons other than executants. Even if we omit the words "*tarwad* necessity" the executant may under certain conditions avoid his own document. Such circumstances do exist. I object to the deletion of the words "except for *tarwad* necessity."

MR. P. K. NARAYANA PILLAI: Can a court of law disregard the law as it exists in the statute?

DEPUTY PRESIDENT: Disregarding the law is a matter exclusively within the discretion of a court of law. The question of regarding or disregarding the law is a question of fact.

MR. P. K. NARAYANA PILLAI: No court of law can disregard a provision of law. My friend seems to suppose that the imperative provision to make out *tarwad* necessity is harmless, trusting to the consideration of onus of proof. Supposing that the onus is successfully discharged, will my friend allow the executant himself to impeach a document on the ground of absence of necessity? That is the question.

DEPUTY PRESIDENT: For the present, let me put the latter amendment. I appreciate your contention about *tarwad* necessity. But Mr. Ramakrishna Pillai seems to have connected one with the other.

The question is that the words "or give discharges of mortgages with or without possession" be inserted after the words "twelve years" in line 5.

The amendment was put to the vote and lost.

DEPUTY PRESIDENT: The question is that the words "except for *tarwad* necessity and" in line 1 be deleted.

The amendment was put to the vote and lost.

MR. V. SUBBA AIYAR: In view of the discussion that has just taken place on this clause, I propose that the words "consideration and" be inserted between "for" and "*tarwad*" in line 1.

MR. M. GOVINDAN: I second it.

DEPUTY PRESIDENT: The question is that the words "consideration and" be inserted between "for" and "*tarwad*" in line 1.

The amendment was put to the vote and carried.

MR. K. P. RAMAN PILLAI: I beg to move that, in line 3, the word "immovable" be inserted between the words "*tarwad*" and "property". As the clause stands, the *karanavan* cannot sell both the movable and immovable properties of the *tarwad*. He will not be in a position to sell a bull or a cow or paddy, and other agricultural products, and the result would be injurious to the *tarwad*. I, therefore, think that we shall be unnecessarily restricting his powers in respect of movables. Hence I move the amendment.

SAHIB BAHADUR M. K. KHADIR PILLAI: I second the amendment.

MR. V. SUBBA AIYAR: I accept the amendment.

MR. T. K. VELU PILLAI: Sir, no doubt, there have been alienations of movable and immovable property. Now Mr. Raman Pillai wants the alienation of immovable property to be guarded more than movable property. But, I think, in the nature of the flagging interest a *karanavan* has in the *tarwad* now-a-days, if we make such a provision, the chances are that the *karanavan*, the so-called monster, would take the earliest opportunity to dispose of valuable movables, even elephants. So, if an immovable property worth Rs. 150 is to be protected, an elephant, which is worth Rs. 10,000, should be protected with greater care. However significant might have been the distinction between movable and immovable property in the olden days when *karanavans* were admittedly looking after the interests of *tarwads*, at a time when we are at the parting of the ways, I think the *karanavans* must not be given any greater opportunity to destroy movables. It is well-known that the one charge that is levelled against *karanavans* in *karanavasthanam* suits is that movables have been taken away to their wives' houses and kept there.

MR. V. SUBBA AIYAR: That is an allegation.

DEPUTY PRESIDENT: What about the sale of paddy, coconuts, and quasi-agricultural products?

MR. T. K. VELU PILLAI: I am only dealing with some concrete instances; and as—

DEPUTY PRESIDENT: As the clause stands, he cannot sell the produce of *tarwad* compounds.

MR. T. K. VELU PILLAI: Mr. Raman Pillai's amendment would give a free hand to *karanavans* in regard to the sale of movable properties. I oppose the amendment.

[Mr. P. K. Narayana Pillai.]

MR. P. K. NARAYANA PILLAI: In support of Mr. Velu Pillai, I want to make a few observations. Certainly, the difficulty pointed out by Mr. Raman Pillai does exist. But if the clause is going to be amended in the form proposed by Mr. Raman Pillai, it will hold out a premium to every *karanavan* to alienate all the *tarwad* movable properties.

DEPUTY PRESIDENT: I suppose that the *karanavan* can do it under the law as it stands at present.

MR. P. K. NARAYANA PILLAI: The view that movables are at the absolute disposal of the *karanavan*, as the old decisions maintained, is no longer law.

DEPUTY PRESIDENT: Could he not do it for family necessity even now?

MR. P. K. NARAYANA PILLAI: Not at any rate under the Nair Regulation. When the alienation of elephants became too numerous, the current of decisions favouring the absolute power of the *karanavan* had to be modified and emphasis was laid on consideration and *tarwad* necessity.

DEPUTY PRESIDENT: Beyond that, did they go and curtail the powers of the *karanavan* in making alienations by insisting upon the joining of the junior members of the *tarwad*?

MR. P. K. NARAYANA PILLAI: Under the Nair Regulation, the junction of the junior members is indispensable. That apart, how the law stands with respect to other communities is a question which I do not propose to answer off-hand, without going through the later decisions which are not with me just now. That the *karanavan's* authority over movables has been considerably curtailed is quite clear. The scope and extent of the restriction may be gathered from the decision of the High Court in the Paliyakkara Raja's elephant alienation case, which, I presume, is a reported case. Anyhow, as Mr. Velu Pillai pointed out, there may be valuables in a *tarwad* and when once the clause is amended as is now proposed, it will mean that the *karanavan* is at liberty to alienate them, since they are excluded from the clause. The expression of one thing generally means the exclusion of other things. This is one of the accepted canons of interpretation of legislative enactments. So it would mean that the *karanavan* has absolute power of disposal over movables.

DEPUTY PRESIDENT: That power is not affirmed in the clause.

MR. P. K. NARAYANA PILLAI: When one particular thing is expressly stated it is possible to argue that the other is excluded. "*Expressio unius est exclusio alterius*" as the maxim goes. That is a source of risk which will tend to defeat our object. That is one difficulty. Further, have we got a definition of movable and immovable properties?

DEPUTY PRESIDENT: We have got the General Clauses Regulation.

MR. P. K. NARAYANA PILLAI: The definitions of movable and immovable properties differ from those in almost all the Regulations. There is no uniformity in the definitions of movable and immovable properties. The measure in hand will bring all the divergent definitions into play. Suppose there is a hypothecation debt. When the debt is transferred, the security is transferred along with it according to the principles of the Transfer of Property Act. Is such a case a transfer of movable or immovable property?

DEPUTY PRESIDENT: Under the Registration Regulation.

MR. P. K. NARAYANA PILLAI: What of that? In the supposed instance, the professed transfer is only of the debt. The security is transferred by operation of law.

DEPUTY PRESIDENT: What about a decree for immovable property? Will the *karanavan* be able to transfer it?

MR. P. K. NARAYANA PILLAI: Exactly. It is only movable property. See the Registration Regulation. All the decrees obtained by him may be assigned by him. So the particular panacea will not counteract the mischief pointed out and will enable the *karanavan* to sell away the movables. The question is whether movable and immovable properties should not be properly defined and which kind of immovables should be exempted. Instead of that, simply to insert "immovable" in the midst of the clause will not help us at all. The question has never been considered. I had the same difficulty in a particular case under the Nair Regulation. In that case, the *karanavan* obtained a decree against a junior member of the *tarwad*. He wanted to assign the decree. The junior member objected to the decree being assigned without the consent of the junior members including herself. That was a strange objection, no doubt.

DEPUTY PRESIDENT: Was that objection upheld?

MR. P. K. NARAYANA PILLAI: Fortunately the parties compromised (*laughter*) after the objection was raised. I am only submitting that all manner of difficulties of that description would arise, because the question has not been properly examined. I leave it to Mr. Subba Aiyar himself to make the necessary provisions in such a way that they may be acceptable to the House. I do not want any *karanavan* to be placed under any restriction in regard to the sale of such things as paddy, cocoanuts, etc. At the same time, I do not want to arm him with power which he does not possess and which the community does not wish him to possess. I do not also wish to leave the meaning of the expressions "movable" and "immovable" in doubts and difficulties.

MR. N. RAMAKRISHNA PILLAI: I would also strongly oppose the amendment for all the reasons already urged. I think that no case has been made out for the amendment and that it would be better to leave the clause as it is and leave the courts to interpret the section reasonably and fairly. It has been suggested that the *karanavan* will

[Mr. V. Subba Aiyar.]

not be able to sell paddy and cocoanuts. That is not a reasonable argument, because the selling of cocoanuts, etc., is an act of management, and no man of commonsense will object to such acts of management. That cannot be urged as a reason for inserting the word "immovable."

MR. K. P. RAMAN PILLAI: After hearing Mr. P. K. Narayana Pillai, it seems to me that there is considerable weight in the arguments he has advanced. But that does not induce me to withdraw my amendment which, I think, is also necessary. What is required is a compromise between us. (*Laughter.*) I appeal to the Law Member to step in and suggest a suitable explanation of the term "property" so far as this clause is concerned, so as to exclude immovable properties and valuable movables and include only ordinary movables, such as cattle, etc.

MR. T. K. VELU PILLAI: I wish to know whether it would be accepted as property particularly for the sake of the Regulation.

MR. K. P. RAMAN PILLAI: Yes.

MR. V. SUBBA AIYAR: I think Mr. P. K. Narayana Pillai has overstated his case, when he described immovable property and transfer of decrees. Any interest in an immovable property is an immovable property. A decree charged on immovable property is immovable property.

MR. P. K. NARAYANA PILLAI: I would draw my friend's attention to the definition of immovable property in the Registration Regulation.

MR. V. SUBBA AIYAR: Such a decree is registered as an immovable property. That apart, the real point we are concerned with is whether by omitting the word "immovable" the provision will apply to all properties. Even as the clause stands, I do not think it is likely to apply to movable properties. If we want to include movable properties also, I do not know where to draw a line. I suppose the question of value and the extent to which a *karanavan* may dispose of movables will depend upon the status and condition of the particular *tarwad* and not upon any other circumstances in the case, so that what is valuable in the case of one *tarwad* may extend to five rupees, and what is valuable in the case of another may extend to five thousand rupees. Thus even here it is difficult to lay down the rule. The existing law in regard to movables is not proposed to be abrogated. What is purported to be done by the section is that, in the case of immovable properties, all the persons of a *tarwad* should join in alienations. That is all that is contemplated by the clause. In the case of movable property, the necessity has to be proved. I do not think why necessity should not be proved and consideration also. If that should be proved, the existing law is quite enough to safeguard the interests of the *tarwad*. As for a suitable expression to be put in, I leave it to the non-official members of the Council.

MR. T. K. VELU PILLAI: Has a member of the Council any further right than that?

DEPUTY PRESIDENT: The question is that the word "immovable" be inserted between "*tarwad*" and "property" in line 3.

The amendment was put to the vote and carried.

The following amendment was not moved.

MR. A. GOVINDA MENON: Delete the whole and substitute the following:

"Every member of a *tarwad* shall have a proprietary right in the *tarwad* properties. A member shall have the right to claim separate maintenance in case he or she does not reside in the family house and the amount of such maintenance shall be the sum represented by dividing the net income of the family by the number of members then belonging to the *tarwad*".

DEPUTY PRESIDENT: The question is that clause 21 as amended by the Council stand part of the bill.

The motion was put to the vote and carried.

Clause 21, as amended, was added to the bill.

Clause 22.

MR. K. P. RAMAN PILLAI: I beg to move that the word "written" be inserted between the words "the" and "consent" in line 3, clause 22.

Personally, I can find very little difference between a mortgage for more than twelve years and a lease for the same period. Therefore, I think it safer in the interests of the *tarwad* that the *karanavan* should take the written consent of all the major members before he executes such a document.

MR. A. GOVINDA MENON: I second the motion.

MR. V. SUBBA AIYAR: I am against the amendment. The ordinary presumption is quite enough to my mind, because, virtually, there is some difference between the two classes. What my friend suggests is that there must be written consent. In the first case, it is virtually a permanent alienation. If the amendment is accepted, it will interfere with the powers of the *karanavan* to execute short-term leases. In such cases, written consent is not insisted on. If the *karanavan* and the senior *anandaravan* join in the execution or the latter attests the deed, the presumption is that all have agreed. It is only a question of burden of proof.

MR. K. P. RAMAN PILLAI: I just wanted to ascertain the wish of the community in the matter. I do not press the amendment.

DEPUTY PRESIDENT: Do I understand that you withdraw your amendment?

MR. K. P. RAMAN PILLAI: Yes.

The amendment was withdrawn with the leave of the Council.

[Deputy President.]

MR. K. PARAMESVARAN PILLAI: There is a consequential amendment to be made in this clause, i. e., the word "consideration" which has been inserted in clause 21 may also be inserted in this clause.

DEPUTY PRESIDENT: To my mind, the legislature appears to make a distinction between what may be regarded as a permanent alienation dealt with in clause 21 and alienation of a less permanent character dealt with in clause 22, requiring written consent in the one instance and a simple assent in the second. I think that the rights and liabilities of the parties will not be affected by our failure to insert the other amendment in clause 22.

MR. M. GOVINDAN: Having inserted it in section 21, I think, the same may be done in this clause also.

MR. V. SUBBA AIYAR: The word "consideration" may be put in there. I shall move the amendment at the final stage.

DEPUTY PRESIDENT: What is the consideration that you prescribe in regard to an ordinary lease or a lease for 12 years?

MR. V. SUBBA AIYAR: A lease for a premium.

DEPUTY PRESIDENT: Then you may formally move the amendment, Mr. Paramesvaran Pillai.

MR. K. PARAMESVARAN PILLAI: I move that the word "consideration and" be inserted between "for" and "tarwad" in line 3.

MR. M. GOVINDAN: I second it.

DEPUTY PRESIDENT: The question is that the word "consideration and" be inserted between "for" and "tarwad".

The motion was put to the vote and carried.

DEPUTY PRESIDENT: The question is that clause 22 as amended stand part of the bill.

The motion was put to the vote and carried.

Clause 22, as amended, was added to the bill.

Clause 23:

MR. K. PARAMESVARAN PILLAI: In regard to clause 23 also, I beg to move that the word "consideration" be inserted as in the case of clauses 21 and 22.

MR. N. KUMARAN: I second the motion.

MR. V. SUBBA AIYAR: I have some doubt as to whether a debt can be incurred without consideration. I shall consider the question; and if the amendment is necessary, I shall move the same at the final stage of the bill.

DEPUTY PRESIDENT: Do you withdraw your motion on that assurance?

MR. K. PARAMESVARAN PILLAI: Yes. I withdraw the amendment, on that assurance, at this stage.

The amendment was by leave withdrawn.

DEPUTY PRESIDENT: The question is that clause 23 stand part of the bill.

The motion was put to the vote and carried.

Clause 23 was added to the bill.

Clause 24.

DEPUTY PRESIDENT: The question is that clause 24 stand part of the bill.

The motion was put to the vote and carried.

Clause 24 was added to the bill.

Clause 25.

DEPUTY PRESIDENT: The motion is that clause 25 stand part of the bill.

The motion was put to the vote and carried.

Clause 25 was added to the bill.

Clause 26.

DEPUTY PRESIDENT: The question is that clause 26 stand part of the bill.

The motion was put to the vote and carried.

Clause 26 was added to the bill.

Clause 27.

The following amendment was not moved:—

MR. N. RAMAKRISHNA PILLAI: The *karanavan* or the manager for the time being shall be entitled at the end of the year to appropriate besides his maintenance amount not exceeding 25 per cent of the net realised income of the *tarwad* up to a maximum of one thousand rupees. So far as this amount is concerned, it shall be deemed to be his self-acquisition.

DEPUTY PRESIDENT: The next is Mr. K. P. Raman Pillai's amendment. How does it come in as an amendment to clause 27? It is a separate clause. I think you will have to move it as a separate clause.

MR. K. P. RAMAN PILLAI: Yes, Sir, I beg to move that the following be inserted as clause 28, the subsequent clauses being re-numbered:

"28. Any junior member of a *tarwad* shall be entitled to redeem *tarwad* properties outstanding on a mortgage."

[Deputy President.]

I move this clause so as to enable the junior members in affluent circumstances to redeem *tarwad* properties outstanding on mortgage and thereby help the *tarwad* in becoming more prosperous and to prevent the deterioration of *tarwad* properties.

MR. J. JOHN NIDIRY: I second it.

MR. T. K. VELU PILLAI: I wish to oppose Mr. Raman Pillai's amendment. But there is no time now. It is an important proposition.

DEPUTY PRESIDENT: I shall now stop the consideration of the bill. I request the non-official members of the Council to be present for electing four non-official members of the Council to serve on the University Committee.

The Council adjourned at 4-55 P. M.

S. PARAMESVARA AIYAR,

Secretary to the Legislative Council.